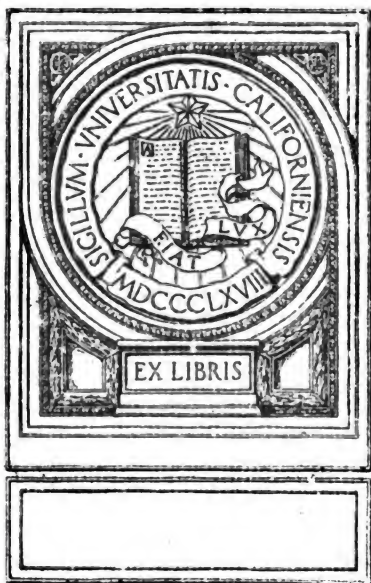




GIFT OF

Wm. G. Merriam







In Equity, No. 420. ✓

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**In the District Court of the United States,  
District of Utah.**

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UNITED STATES OF AMERICA, PETITIONER,

v.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC  
RAILWAY COMPANY ET AL., DEFENDANTS.

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**RECORD—VOLUME 6.**

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**DEFENDANTS' EXHIBITS.**

Pages 1990 to 2325, inclusive.

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No. 993—In Equity. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. the Union Pacific Railroad Company; the Oregon Short Line Railroad Company; the Oregon Railroad & Navigation Company; the San Pedro, Los Angeles & Salt Lake Railroad Company; the Atchison, Topeka & Santa Fe Railway Company; the Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. Volume XII.—Pleadings.

746-748 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of American, complainant, v. the Union Pacific Railroad Company and others, defendants.

Original petition. (Filed February 1, 1908.)

749 United States Circuit Court, District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. In equity.

Petition.

*To the judges of the Circuit Court of the United States for the District of Utah.*

Now comes the United States of America, by Hiram E. Booth, the United States attorney for the district of Utah, acting under  
750 direction of the Attorney General of the United States, and brings this its proceeding by way of petition against the Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah;

The Oregon Short Line Railroad Company, a corporation organized and existing under the laws of the State of Utah;

The Oregon Railroad & Navigation Company, a corporation organized and existing under the laws of the State of Oregon;

The San Pedro, Los Angeles & Salt Lake Railroad Company, a corporation organized and existing under the laws of the State of Utah;

The Atchison, Topeka & Santa Fe Railway Company, a corporation organized and existing under the laws of the State of Kansas;

The Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky;

The Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin;

The Great Northern Railway Company, a corporation organized and existing under the laws of the State of Minnesota;

The Farmers' Loan & Trust Company, a corporation organized and existing under the laws of the State of New York;

751 Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, citizens of the State of New York and residents of New York City;

Henry C. Frick, a citizen of the State of Pennsylvania and resident at Pittsburg, in said State; and

William A. Clark, a citizen of the State of Montana and resident at Butte, in said State, and complains and says:

I. The defendants Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, San Pedro, Los Angeles & Salt Lake Railroad Company, Atchison, Topeka & Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, and Great Northern Railway Company were, at the times hereinafter mentioned, and now are, common carriers employed in the transportation of freight and passengers among the several States of the United States and between such States and foreign nations, and as such carriers so employed were and are engaged in trade and commerce among the several States and with foreign nations.

II. That from and after January 1, 1901, the defendants Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, and James  
752 Stillman, with certain other persons who have joined with them from time to time, including the defendants Henry H. Rogers and Henry C. Frick, have owned or controlled a majority of the capital stock of the defendant Union Pacific Railroad Company;

That during all of said time the said defendant Edward H. Harriman has been, and still is, the chairman of the executive committee of the board of directors of said company, and since October,

1903, he has likewise been, and still is, the president of said corporation;

That the said Jacob H. Schiff, Otto H. Kahn, and James Stillman were, from a time prior to said January 1, 1901, and until the year 1906, directors of said corporation;

That said James Stillman has continued to be a director thereof, and that during all of said period and until the year 1906 the said Otto H. Kahn and said Stillman were members of the said executive committee of said corporation, and said Stillman is still a member thereof;

That during all of said time the said Jacob H. Schiff and Otto H. Kahn were, and still are, members of a banking firm of the city of New York, doing business under the firm name and style of  
753 Kuhn, Loeb & Co., which said banking house is, and during all the times above stated has been, the fiscal agent of said Union Pacific Railroad Company, through which agent substantially all the purchases and sales of stocks and bonds hereinafter mentioned have been made;

That said defendant Henry H. Rogers has been a director of said corporation since the year 1902, and that said defendant Henry C. Frick has been a director of said corporation since the year 1904, and both said parties are still members of said board of directors;

That during all the times above mentioned, by by-laws of said company to that end enacted, the directors of said corporation have delegated their power to manage and direct the business and affairs of the said company to an executive committee of five members to act in such manner as such committee should deem best for the company's interest in all cases in which specific directions shall not have been given by the board; and it is and has been also provided by said by-laws that the chairman of said executive committee is authorized to represent that committee when it is not in session;

That pursuant to such by-laws the said defendant Harriman has, with the concurrence and assistance of said individual defend-  
754 ants, other than defendant Clark, who were members of the executive committee or directors of said company, dominated the affairs and controlled the management of said defendant Union Pacific Railroad Company.

III. The defendant Union Pacific Railroad Company is, and during all of said times has been, the owner of lines of railway extending from Council Bluffs, Iowa, to Ogden, Utah; from Julesburg, a point on said line, to Denver, Colo.; from Denver to Cheyenne, Wyo.; and a line from Kansas City, Mo., to Denver;

That the predecessor of the said Union Pacific Railroad Company was organized under the act of Congress approved July 2, 1862 (12 Stat., 489). Its charter was thereafter amended by the acts of July

2, 1864 (13 Stat., 356), February 24, 1871 (16 Stat., 430), and other acts. It constructed a line of railway from a point in Council Bluffs, Iowa, through Cheyenne, Wyo., to Ogden, Utah, with a branch from Julesburg to Denver, Colo.;

That the Kansas Pacific Railway Company was previously incorporated by special act of Congress as the Leavenworth, Pawnee & Western Railroad Company (subsequently the Union Pacific 755 Railroad Company, eastern division), and constructed a line of railway from Kansas City, Mo., to Denver:

That the Denver Pacific Railway & Telegraph Company was incorporated under the laws of Colorado, and constructed the line of railroad from Denver to Cheyenne;

That these railways were consolidated under the said act of Congress of 1862 into the Union Pacific Railway Company;

That the Central Pacific Railroad Company was organized under the laws of California, and constructed a line of railroad from Sacramento, Cal., to Ogden, Utah;

That the Western Pacific Railroad Company was organized also under the laws of California, and constructed a line of railroad from San Francisco to Sacramento, Cal., and that these two latter corporations were afterwards consolidated into and became the Central Pacific Railroad Company, which was for many years engaged in the operation of said line of railroad from San Francisco to Ogden, at which point it connected with the main line of said Union Pacific Railroad Company;

That these lines of railroad were constructed by Government aid, consisting of land grants of 10 sections per mile of road, and Government bonds secured by a second mortgage upon the rail- 756 ways in the sum of \$16,000 per mile in open country, \$48,000 per mile for 300 miles of the railroad most mountainous and difficult of construction, and \$32,000 per mile for the balance of the mountainous railroad;

That by the act of Congress approved July 2, 1864, the said lines of railway receiving said aid, to wit, the Central Pacific Railroad Company, the Western Pacific Railroad Company, the Union Pacific Railway Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway & Telegraph Company, constituting all of the said lines from Council Bluffs and from Kansas City, through Denver, Cheyenne, Ogden, and Sacramento, to San Francisco, were required to operate their lines as one continuous line, without discrimination against or in favor of any or either of said companies;

That in and by section 15 of said act of Congress approved July 2, 1864, it was, among other things, provided "That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all pur-

poses of communication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line, and in such operation and use to afford and secure to each equal advantages and facilities as to rates, time, and transportation,  
757 without any discrimination of any kind in favor of the road or business of any or either of said companies or adverse to the road or business of any or either of the others”;

That by the act of Congress approved June 20, 1874 (18 Stat., 111), this provision was in substance reenacted, and any officer or agent of the companies refusing to operate and use the said railroads for all purposes of communication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line, without discrimination as aforesaid, was declared to be guilty of a misdemeanor, punishable by fine and imprisonment; and any party injured was authorized to sue for damages or to procure an injunction to enforce its provisions;

That the Oregon Short Line Railroad Company is, and during all of said times has been, the owner of a line of railway extending from a junction with said main line of the Union Pacific at Granger, Wyo., to Huntington, Oreg.; also a line from Salt Lake City, Utah, to Butte, Mont.;

That the defendant Oregon Railroad & Navigation Company is, and during all of said times has been, the owner of a line of railroad from said Huntington, Oreg., to Portland, Oreg.;

758 That all three of said lines of railway are the owners of important branch lines in various States; that substantially all the stock of said Oregon Short Line Railroad Company is, and during all said times has been, owned by said Union Pacific Railroad Company, and that substantially all the stock of said Oregon Railroad & Navigation Company is, and during all of said times has been, owned by said Oregon Short Line Railroad Company and said Union Pacific Railroad Company, and that by means of such stock ownership said Union Pacific Railroad Company has at all times controlled and managed the said Oregon Short Line Railroad Company and said Oregon Railroad & Navigation Company, and the lines of said three corporations have composed and still compose through main lines of track from Council Bluffs, Iowa, and Kansas City, Mo., upon the Missouri River, to said city of Portland, Oreg.;

That in the year 1901 said Oregon Railroad & Navigation Company was the owner of a line of steamships plying between said Portland, Oreg., and San Francisco, Cal., by way of the Willamette and Columbia Rivers and the Pacific Ocean; and through the ownership of the stock of a corporation to which said steamship line has been conveyed still owns the same; and also was and still is the owner of the stock of a corporation known as the Portland & Asiatic Steamship

759 Company, which was running and still runs a line of steamships from said Portland to Japan, China, and other points of the Orient, and the said lines of steamships constitute, with said railway lines, through routes for the transportation of property and persons both among the several States and with foreign nations;

That the Southern Pacific Company was on said January 1, 1901, and still is the owner and in control by and through its ownership of the stock of various connecting lines of a line of railway extending from New Orleans, in the State of Louisiana, through said State and the State of Texas, the Territories of New Mexico and Arizona, and the States of California and Oregon, to said Portland;

That said Southern Pacific Company also owned and still owns a line connecting with said through lines ending at Galveston, Tex., upon the Gulf of Mexico, and in connection with its lines of railroad so reaching New Orleans and Galveston it owned and operated and still owns and operates a line of steamships running from said ports to Habana, Cuba, and to the city of New York;

That then and now the said Southern Pacific Company was and is also the owner of all the capital stock of the Central  
760 Pacific Railroad Company, a corporation organized and existing under the laws of California, which succeeded to the ownership of the line of railway from Ogden to San Francisco theretofore owned by the corporation of the same name, to wit, Central Pacific Railroad Company, hereinbefore particularly described; and by virtue of such ownership of all said capital stock said Southern Pacific Company then and now in all respects controls the operation and management of the affairs and business of said Central Pacific Railroad Company;

And was and still is also the owner of a majority of the stock of the Pacific Mail Steamship Company, which latter company operates a line of steamships from San Francisco to the Hawaiian and Philippine Islands, China, Japan, and other oriental ports, and also a line of steamers from San Francisco to Panama, which, with the lines of the Panama Railroad Company crossing the Isthmus, and ships running in connection therewith, constitutes a through line from New York to San Francisco;

That the said rail lines of the said Southern Pacific Company from the Mississippi River to Portland, Oreg., by way of San Francisco and Los Angeles, were in active competition with said lines of  
761 railroad of the Union Pacific Railroad Company for the transportation of vast quantities of freight from points in the Mississippi Valley and in the Eastern States, both to and from the Pacific coast and points in Colorado and other interior States; and said steamship line of said Southern Pacific Company from New York to New Orleans and Galveston, together with its rail lines run



in connection therewith, was in active competition with the lines of said Union Pacific Railroad Company for a large amount of traffic originating in the Atlantic coast and Central States;

That the rail line of said Southern Pacific Company from San Francisco to Portland was in active competition with the ships plying between San Francisco and Portland and owned by said Oregon Railroad & Navigation Company, as hereinbefore alleged;

That the said ships of the Portland and Asiatic Steamship Company, in connection with the rail lines of said Union Pacific Railroad Company and its subsidiary companies, as hereinbefore alleged, running from Portland, Oreg., to the East, were in active competition with the ships of said Pacific Mail Steamship Company and the rails of said Southern Pacific Company running to the East from San Francisco;

That the line of railroad composed of the tracks of said  
762 Oregon Short Line Railroad Company and said Oregon Railroad & Navigation Company between Ogden, Utah, and Portland, Oreg., were in active competition with the lines of said Southern Pacific Company between said points;

*That the rail lines of the said Southern Pacific Company were in active competition with the ships and rail lines of the said Oregon Railroad & Navigation Company for a large amount of traffic between San Francisco and points in Montana, Idaho, and other States.<sup>1</sup>*

That the competition hereinbefore alleged between the system of railroads and steamships owned and controlled by said Union Pacific Railroad Company and the system of railroads and steamships owned and controlled by said Southern Pacific Company was substantial and included a large volume of traffic, both freight and passenger;

That the Atchison, Topeka & Santa Fe Railway Company has been for a period of more than eight years last past the owner and in control, by direct ownership and by the ownership of the stock of  
763 railway companies owning a portion of said lines and by lease, of a line of railway reaching from Chicago, in the State of Illinois, through the States of Illinois, Missouri, Kansas, Colorado, the Territories of New Mexico, Arizona, and the State of California to the city of San Francisco and to tidewater at San Diego, Cal.; that said line of railway touches the Union Pacific at Kansas City, Mo., and is and during all said times has been competitive with said Union Pacific Railroad Company and said Southern Pacific Company for a large traffic to and from the Pacific coast and the Orient, to and from various points in the East and the Mississippi Valley, and in the State of Colorado and other interior States;

<sup>1</sup> Italicized paragraph inserted by amendment under order of court, with the provision that the said allegation should be considered denied by all of the defendants without amendment to the several answers.

That the tracks of said Atchison, Topeka & Santa Fe Railway Company cross the continent between those of the Southern Pacific Company and the Union Pacific Railroad Company, and until the construction of the San Pedro, Los Angeles & Salt Lake Railroad, hereinafter referred to, constituted the only outlet to the East by rail from all the territory along the Pacific coast south of Portland, Oreg., to the Mexican border, other than the lines of said Union Pacific Railway Company and said Southern Pacific Company.

That the said Atchison, Topeka & Santa Fe Railway Com-  
764 pany was for a number of years engaged in operating a line of steamships to oriental ports from said port of San Diego, Cal., and said line of ships, with its rail connections by way of the tracks of said Atchison, Topeka & Santa Fe Railway Company, was in active competition with the steamship and rail lines of said Union Pacific Railroad Company and the Southern Pacific Company hereinbefore described;

That the traffic that was so competitive between said Southern Pacific and Union Pacific and said Atchison, Topeka & Santa Fe was and is of great volume, both passenger and freight;

That the Northern Pacific Railway Company and the Great Northern Railway Company are each the owners of lines of railway extending from ports upon Lake Superior in the States of Wisconsin and Minnesota, and from the city of St. Paul, in the State of Minnesota, through and across the States of Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon, and said railroad corporations are the joint owners of substantially all the stock and are in control of the Chicago, Burlington & Quincy Railroad Company, a corporation which is the owner of a vast system of rail lines connecting with  
the lines of the Northern Pacific Railway Company at Bil-  
765 lings, Mont., and at St. Paul, and with the lines of the Great

Northern Railway Company at St. Paul, running thence to the cities of Chicago, St. Louis, Mo., Kansas City, Denver, and Omaha, Nebr., and crossing portions of the States of Minnesota, South Dakota, Iowa, Illinois, Wisconsin, Missouri, Nebraska, Kansas, Colorado, and Wyoming, and the lines of said Northern Pacific Railway Company and said Chicago, Burlington & Quincy Railroad Company are and have, by the Supreme Court of the United States, been held to be competitive with the lines of the said Union Pacific Railroad Company for a large amount of traffic, both passenger and freight.

That as to an extensive traffic between various points in the Eastern and Central States and the Pacific coast and the Orient the said Northern Pacific and Great Northern Railway Companies, together with their connections and the steamship lines controlled by them,

are and at all times have been competitors for business with said Union Pacific Railroad Company and its connections so owned by it.

That the said San Pedro, Los Angeles & Salt Lake Railroad Company is the owner of a line of railroad extending from San Pedro, a port on the Pacific Ocean in the State of California, thence  
766 by way of Los Angeles through the States of California, Nevada, and Utah to the city of Salt Lake in said State of Utah.

That a large part of said line is controlled by said corporation by direct ownership and a small portion thereof in southern California by lease, but the same constitutes a continuous line between said points, and the same would have been but for the suppression of competition hereinafter alleged at all times since its construction by reason of its location and its connection with said Oregon Short Line Railroad Company at Salt Lake City and its connection with the lines of the Denver & Rio Grande Railway Company at the same place, which latter company owns a line of railway from Salt Lake City to Denver, a competitor with said Southern Pacific Company and said Union Pacific Railroad Company.

IV. That in the spring of 1901 the said defendants Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, and the defendant Union Pacific Railroad Company, contriving and intending unlawfully to restrain the trade and commerce among the several States and between said States and foreign countries carried on by  
said Union Pacific Railroad Company, said Southern Pacific  
767 Company and said other competing lines of railway and steamships as hereinbefore alleged and contriving and intending unlawfully to monopolize and attempt to monopolize such trade and commerce, and contriving and intending unlawfully to restrain and prevent competition among said railway systems and steamship lines in respect to such interstate and foreign trade and commerce, and contriving and intending unlawfully to deprive the public of the facilities and advantages in the carrying on of such interstate and foreign trade and commerce theretofore enjoyed through the independent competition of said railway systems and steamship lines, unlawfully entered into a combination or conspiracy to effect a virtual or substantial consolidation of said Union Pacific Railroad Company and said other transcontinental railway companies and said steamship lines, and to place restraint upon all competitive interstate and foreign trade and commerce carried on by them and to monopolize and attempt to monopolize the same and to suppress the competition theretofore existing between the same in said interstate and foreign trade and commerce through their instrumentality and by the means following, to wit:

That said firm of Kuhn, Loeb & Co., acting through said defendants Schiff and Kahn, and with the assistance of said  
768 defendant Harriman, acquired 750,000 shares of the stock of said Southern Pacific Company, of the par value of \$75,000,000, out of a total issue then outstanding of \$197,847,788, which said stock was acquired for the purpose of turning the same over to said Union Pacific Railroad Company, so that the same might be held in the treasury of said company and voted by it, for the purpose and with the intention of controlling the election of the board of directors and officers of the said Southern Pacific Company and eliminating the competition that had theretofore existed between said Union Pacific system and said Southern Pacific system;

That said stock was, on or about March 4, 1901, duly delivered to said Union Pacific Company, pursuant to said conspiracy, and said company either by itself or by its subsidiary company, the Oregon Short Line Railroad Company, has since been in possession and ownership thereof, and has voted the said shares of stock at all the stockholders' meetings of said Southern Pacific Company;

That thereafter, with the like purpose of suppressing competition and placing restraint upon all competitive interstate and foreign trade and commerce, and monopolizing and attempting to  
769 monopolize the same, and for the purpose of rendering more certain and secure the efforts theretofore made, as above stated, by the acquisition of the said 750,000 shares of said stock, said conspirators further acquired for, and said Union Pacific Railroad Company obtained, an additional 150,000 shares of stock of said Southern Pacific Company, which were likewise placed in the treasury of said company, making an aggregate of 900,000 shares of stock of said Southern Pacific Company so acquired for the purpose and in the manner above stated;

That all of the said stock has since been voted by said Union Pacific Railroad Company, or under its direction, at all meetings of stockholders of said Southern Pacific Company, with the end and for the purpose of restraining trade and commerce and eliminating competition and monopolizing and attempting to monopolize such interstate and foreign commerce, as hereinbefore averred;

That thereafter the said defendants Harriman, Schiff, Kahn, and Stillman and said Union Pacific Railroad Company caused to be issued by said Southern Pacific Company \$39,563,300 par value of preferred capital stock of said Southern Pacific Company, which  
770 was subscribed for by the various stockholders of said Southern Pacific Company in proportion to their holdings of common stock;

That said Union Pacific Railroad Company, for the purpose above stated, and with intent to insure the success of said attempt to

restrain interstate and foreign commerce and monopolize the same, subscribed for, took, and now has in its possession the proportion or percentage of such preferred stock to which the said 900,000 shares of common stock was entitled under said plan, to wit, \$18,000,000 par value thereof, and has since its said issue at all times voted the same at all meetings of said Southern Pacific Company;

That the said 750,000 shares of Southern Pacific common stock was, in the first instance, acquired directly by said Union Pacific Railroad Company, but for convenience in financing, or other reasons unknown to complainant, the said stock was in form turned over to the said defendant Oregon Short Line Railroad Company, and the said additional common stock and the said eighteen millions of preferred stock are now in form in the treasury of said Oregon Short Line Railroad Company, but, as hereinbefore averred, are controlled and voted as directed by said Union Pacific Railroad Company,

which owns the stock of said Oregon Short Line Railroad  
771 Company, and controls the management, operation, and business affairs thereof, and the said stock and all of the same is now in form so voted by said Oregon Short Line Railroad Company, but at the dictation and instance of said Union Pacific Railroad Company, the said Harriman, Stillman, Schiff, and Kahn, for the purpose of choosing boards of directors who will act in subservience to the management of said Union Pacific Railroad Company, to the end that competition in interstate and foreign commerce may be restrained and such business be monopolized and attempted to be monopolized, as hereinbefore set forth;

That the balance of the stock of said Southern Pacific Company is scattered among a large number of stockholders, the exact number being unknown to complainant, but that by reason of the fact that such stock is so scattered in small blocks the full amount of such stock is not and never has been at any meeting, and, according to ordinary business usage and experience, never will be, voted at any such meeting, for which reason the said stock so controlled by said Union Pacific Railroad Company has constituted a majority of the stock present at each and every meeting of the stockholders of said

Southern Pacific Company since the year 1902, and will con-  
772 tinue to constitute such majority if said stock remains the property of said Oregon Short Line Railroad Company, and the said Union Pacific Railroad Company, by and through said Oregon Short Line Railroad Company, has controlled the said meetings and has elected such boards of directors as have been selected by said railroad company and said Harriman, Stillman, Kahn, and Schiff;

That said conspirators, after the acquisition of such control of said Southern Pacific Company, at all times caused to be elected suc-

cessive boards of directors of said company, a majority of whom were also directors of said Union Pacific Railroad Company; that said Harriman was made the chairman of the executive committee of said Southern Pacific Company and still fills such office;

That said Southern Pacific Company has conferred upon such executive committee and upon the chairman thereof the same powers as the like committee and the like officer enjoy in the case of the Union Pacific Railroad Company as hereinbefore set forth; that the said Harriman was by said conspirators caused to be elected and he still is the president of said Southern Pacific Company;

That the said Union Pacific Railroad Company and Southern  
773 Pacific Company have and for several years last past have had common traffic officials, operating officials, purchasing agents, and commercial agents, and in all respects the said lines of railway controlled by said corporations, respectively, as hereinbefore set forth, are operated and have since the year 1901 been operated as one single entire system;

That the management of the said steamship lines has been amalgamated and that the competition formerly existing between the said two railway systems, with their steamships, as hereinbefore set forth, has been destroyed, and the said interstate and foreign commerce which was originally and prior to the acts herein complained of the subject of competition has been monopolized in the hands and under the control of the said Union Pacific Railroad Company and its subsidiary corporations and its officials;

That each and every of the acts hereinbefore complained of were done and performed by the said Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company for the purpose and with the intent and result of monopolizing trade and commerce both among the States and with foreign nations and with the intent and result of suppressing and eliminating all competition between said companies.

774 V. Complainant further avers that, pursuant to the said conspiracy so formed to restrain trade and commerce among the several States and with foreign nations and of monopolizing and attempting to monopolize the same, and to suppress the competition theretofore existing between the various railway systems and water lines hereinbefore described, and for the purpose of further effectuating such restraint and creating such monopoly, the said defendants, Harriman, Schiff, Kahn, Stillman, the Union Pacific Railroad Company, and other parties to complainant unknown, did, in the spring of 1901, also cause the said Union Pacific Railroad Company to acquire a majority of the stock of said Northern Pacific Railway Company, meaning and intending thereby to destroy the competition

theretofore existing between said Northern Pacific Railway system and said Union Pacific Railroad system and also between the latter and the lines of the Chicago, Burlington & Quincy Railway Company hereinbefore described;

That the said purchase of stock was made in form by said Oregon Short Line Railroad Company, but said company acted at the instance of said Union Pacific Railroad Company and said other  
775 parties, and the money employed in said purchase was furnished by the said Union Pacific Railroad Company, and said purchase was made solely for the purpose of suppressing competition, restraining trade, and creating monopoly pursuant to the conspiracy hereinbefore alleged;

That after the acquisition of said stock of the said Northern Pacific Railway Company there was formed under the laws of the State of New Jersey a corporation called the Northern Securities Company, which latter corporation was organized for the purpose, among other things, of taking over as a holding company a majority or all the stock of said Northern Pacific Railway Company and said Great Northern Railway Company;

That, acting in unison and harmony with the parties promoting said Northern Securities Company, the defendants, Harriman, Schiff, Kahn, Stillman, and the Union Pacific Railroad Company, and their associates, caused said Oregon Short Line Railroad Company to sell to said Northern Securities Company all of the stock in said Northern Pacific Railway Company so acquired, amounting to \$37,023,000 par value of the common stock and \$41,085,000 par value of the preferred stock out of a total issue of \$155,000,000 par value, and  
776 said Oregon Short Line Railroad Company received from said Northern Securities Company for said stock so transferred to it, in addition to a certain amount of cash, shares of said Northern Securities Company aggregating \$82,491,871 par value, which said shares were issued in the name of the defendant Harriman and one Winslow S. Pierce, who was the counsel for the said Union Pacific Railroad Company, who, however, had no personal interest in the said shares, but held the same for the benefit and on account of the said Oregon Short Line Railroad Company and pursuant to the conspiracy above averred;

That the said preferred stock of the Northern Pacific Railway Company was, pursuant to the charter and terms upon which said stock was issued, duly retired and an additional issue of common stock in the same amount was made, so that the par value of the stock of said Northern Pacific Railway Company remained at \$155,000,000, but the same was all in one class, to wit, common stock;

That thereafter an action was duly brought by the complainant, United States of America, against the said Northern Securities Com-

pany and others in the United States circuit court for the district of Minnesota, in which said cause a decree was duly entered, adjudging that the said holding of the stocks of the Northern Pacific Railway Company and the Great Northern Railway Company was illegal, as in restraint of trade and in violation of the act of Congress approved July 2, 1890, entitled, "An act to protect trade and commerce against unlawful restraints and monopolies," which said decree was affirmed by the Supreme Court of the United States (193 U. S., 197) ;

That thereafter the board of directors of said Northern Securities Company adopted resolutions for the distribution of the shares of the capital stock of the Northern Pacific Railway Company and of the Great Northern Railway Company among the shareholders of it, the said Northern Securities Company, pro rata, but that the said defendants and their associates who had so caused the shares of said Northern Pacific Railway Company to be acquired for the purposes above stated, opposed and protested against the said proposed distribution among the shareholders of said Northern Securities Company, and the said defendants, Harriman and Oregon Short Line Railroad Company, and the said Winslow S. Pierce, in whose name jointly with said Harriman the said shares had been registered,

together with the Equitable Trust Company, a corporation of New York, with whom said shares had been deposited as trustee to secure obligations of said Oregon Short Line Railroad Company, exhibited a bill of complaint against said Northern Securities Company in the circuit court of the United States for the district of New Jersey, praying for an injunction to restrain the said pro rata distribution and a decree that they were entitled to the return and transfer to them by said Northern Securities Company of the shares of common stock of said Northern Pacific Railway Company, which were so delivered to said securities company by said Harriman and Pierce, and the shares of common stock into which the preferred stock of the Northern Pacific Railway Company delivered by them were converted in exchange for the certificates of stock of the Northern Securities Company so issued to and held by the complainants in such suit;

That in said action a decree was entered by the said circuit court granting the injunction prayed (132 Fed. Rep., 464); from this order an appeal was prosecuted to the circuit court of appeals for the third circuit, which in all things reversed the decree of the court below, (134 Fed. Rep., 331) ; thereupon the said cause was removed to the Supreme Court of the United States by certiorari, and the decree of the circuit court of appeals was affirmed and the cause

was remanded to the circuit court with directions to dismiss the bill of complaint;



That the decision by the Supreme Court of the United States, that the said parties were not entitled to relief, was in part placed upon the ground that the said Northern Pacific system, in connection with the system of the Chicago, Burlington & Quincy Railway Company, above referred to, was competitive with the Union Pacific Railroad system, and the delivery to the complainants in said cause of a majority of the total Northern Pacific Railway Company stock would be in violation of said act of July 2, 1890 (197 U. S., 244, 297);

That the said defendants, Harriman, Schiff, Kahn, Stillman, Union Pacific Railroad Company, and their associates, caused the said action last above described to be prosecuted for the sole purpose of effectuating the said conspiracy so originally entered into to restrain trade and commerce, smother competition, and monopolize such trade and commerce among the several States, and with foreign nations, as hereinbefore more fully set forth;

That after the said decision of the Supreme Court of the United States the said Northern Securities Company proceeded with  
780 the distribution of the shares of said Northern Pacific Railway Company and said Great Northern Railway Company, as proposed, and said Oregon Short Line Railroad Company received many million dollars, par value, of the shares of said Northern Pacific Railway Company and said Great Northern Railway Company;

That a certain amount of the said stocks have been since disposed of by said Oregon Short Line Railroad Company, but that it is still the owner of large amounts of the same, as complainant is informed and believes, which said shares, and each and all of them, are illegally held by said Oregon Short Line Railroad Company as the agent and representative of said conspirators, and are held pursuant to the said conspiracy and not otherwise.

VI. Complainant further avers that prior to the year 1902 the defendant, William A. Clark, together with certain associates, caused to be incorporated the said defendant San Pedro, Los Angeles & Salt Lake Railroad Company for the purpose of acquiring and constructing an independent competing line of railway from tide water at San Pedro, Cal., through Los Angeles, and across the States of California and Nevada and a portion of Utah to the city of Salt  
Lake;

781 That the said corporation acquired a line of railway from San Pedro to Los Angeles, and was engaged in the construction of the balance of its line when the said defendants Harriman, Schiff, Kahn, Stillman, the Union Pacific Railroad Company, and Oregon Short Line Railroad Company, for the sole purpose of restraining trade and commerce among the States and with foreign nations and monopolizing the same as hereinbefore more particularly set forth and of preventing competition between said railway so in

the process of construction, and said Union Pacific Railroad system, including the said Southern Pacific system, brought suits of various kinds in the courts for the purpose of harassing and injuring the said railway company and preventing the acquisition of the necessary right of way for the same, put large gangs of men at work to interfere with and prevent construction of the said line, and threatened said Clark, his associates, and said San Pedro, Los Angeles & Salt Lake Railroad, that if said line was completed, the same would be paralleled by said Oregon Short Line, its value would be destroyed, and its ability to secure business or operate at a profit would be taken away, which said threats, litigations, and other interferences were continued for a period of many months, as the result of which

782 the said defendant Clark and his associates were induced to desist from and abandon their proposed independent competing line, and said Harriman and his associates hereinbefore named and said Oregon Short Line Railroad Company on the one part, and the said Clark and his associates upon the other part, combined and confederated together to suppress such proposed competition; and to maintain, continue, and extend the restraint of trade and monopoly theretofore built up and attempted to be built up by said Harriman and his associates, as hereinbefore averred, said Clark joined in said conspiracy to suppress competition in all said territory as hereinbefore set forth, and pursuant to such alliance with said conspirators the said Clark entered into a certain agreement with the defendant Harriman, under date of July 9, 1902, a true and correct copy of which is hereto annexed, marked "Exhibit A," and made a part of this bill as fully as though set forth herein at length;

That pursuant to the said contract made between said defendants Clark and Harriman, certain supplemental deeds, contracts, and agreements in writing were made between the defendant Oregon

Short Line Railroad Company, the defendant Union Pacific  
783 Railroad Company, the defendant Southern Pacific Company, and said defendant San Pedro, Los Angeles & Salt Lake Railroad Company, in and by which contracts and agreements certain lines of railroad controlled by said Oregon Short Line Railroad Company in southern Utah and the eastern part of Nevada were conveyed to the San Pedro, Los Angeles & Salt Lake Railroad Company, and said Oregon Short Line Railroad Company desisted from its work of constructing a line of railway parallel with the said proposed line of the said San Pedro, Los Angeles & Salt Lake Railroad Company, and withdrew all opposition to the construction of the latter;

That said defendant Harriman secured to said San Pedro, Los Angeles & Salt Lake Railroad Company the use of certain of the tracks owned or controlled by said defendant Southern Pacific Com-

pany and said Atchison, Topeka & Santa Fe Railway Company in southern California, and the balance of the said line of the San Pedro, Los Angeles & Salt Lake Railroad Company between Los Angeles and the tracks of the Southern Pacific Company near Riverside, Cal., between the terminus of and the tracks of the Atchison, Topeka & Santa Fe Railway Company so leased to it near the Cajon Pass, in eastern California, and the terminus of the said line so acquired from the said Oregon Short Line Railroad Company  
784 in eastern Nevada were at once constructed by said San Pedro,

Los Angeles & Salt Lake Railroad Company, which, by means of said tracks so constructed, leased, and acquired is now engaged in operating a through line from San Pedro to Salt Lake;

That as provided by said contract Exhibit A, and for the purpose of maintaining, extending, and preserving the restraint of trade and commerce among the States and with foreign nations, and monopolizing the same and destroying competition with relation thereto, pursuant to the conspiracy hereinbefore alleged, certain traffic arrangements and contracts were caused by said conspirators Harriman, Schiff, Kahn, Stillman, Union Pacific Railroad Company, Oregon Short Line Railroad Company, William A. Clark, and their associates, to be made between said San Pedro, Los Angeles and Salt Lake Railroad Company, and said Southern Pacific Company, by which it was agreed that upon all local competitive business the said San Pedro, Los Angeles & Salt Lake Railroad Company should adopt the tariffs and schedules of said Southern Pacific Company, and that the same should not be at any time changed without the consent of

both parties to said agreement during the period of ninety-  
785 nine years thereafter; and certain other contracts were made

by which said Oregon Short Line Railroad Company and said San Pedro, Los Angeles & Salt Lake Railroad Company, respectively, bound themselves for a like period of ninety-nine years that they would not build or assist in building any lines of railway into the respective territories served by said companies; that is to say, that the San Pedro, Los Angeles & Salt Lake Railroad Company would not construct any lines of railway north of the parallel of Salt Lake City, Utah, and the Oregon Short Line Railway Company would not construct any lines south of the parallel of Salt Lake City, Utah, except by common consent; it was further agreed between said Union Pacific Railroad Company and said San Pedro, Los Angeles & Salt Lake Railroad Company that the said Union Pacific Railroad Company should have the right to make and establish through rates on all joint business between points reached over the lines of said Union Pacific Railroad Company and points in Utah on the said San Pedro, Los Angeles & Salt Lake Railroad Company; and in many and divers other ways the said San Pedro, Los Angeles & Salt

Lake Railroad Company surrendered the control of said company and the management of its affairs to the said Harriman and his  
786 associates, including said Union Pacific Railroad Company and said Oregon Short Line Railroad Company.

That the said conspirators caused a total issue of \$25,000,000 par value of stock of said San Pedro, Los Angeles & Salt Lake Railroad Company to be made, and the same was divided in equal parts between the said Clark, representing himself and his associates, and the said Harriman, representing said Oregon Short Line Railroad Company; and said stock was, with the exception of the shares necessary to qualify the directors of said San Pedro, Los Angeles & Salt Lake Railroad Company, placed in the names of said defendants Harriman and Clark, respectively, and by them transferred to and deposited with the Farmers' Loan and Trust Company, a corporation of the State of New York, as trustee, under an agreement by which said trust company should hold and vote the same at all stockholders' meetings for a long term of years, in such manner as said company might be directed by said Clark and Harriman, a true and correct copy of which agreement is hereto attached, marked "Exhibit B," and made a part hereof, as fully as though herein set forth at length;

That each and all of the acts hereinbefore last described were done pursuant to said original conspiracy to suppress competition  
787 and procure a monopoly of the transportation business throughout the territory hereinbefore described, in which conspiracy the said Clark joined, and to which he united himself as above set forth;

That in pursuance of the said combination, confederation, and conspiracy the said lines of railroad so owned and operated by said San Pedro, Los Angeles & Salt Lake Railroad Company are in all respects managed, operated, and controlled by the said conspirators; and there is not, and can not be, while such control continues, any competition whatsoever between the said San Pedro, Los Angeles & Salt Lake Railroad Company and said Southern Pacific Company, or the other lines of railway owned or controlled by said Union Pacific Railroad Company and said Harriman and his associates, as hereinbefore alleged.

VII. Complainant further avers that, pursuant to the said conspiracy to restrain trade and commerce among the several States and with foreign nations, and to monopolize and attempt to monopolize such trade and commerce, and to unlawfully restrain and prevent competition among said railway systems, the said defendants Harriman, Schiff, Kahn, Stillman, Rogers, and Frick did, in or  
788 about the early part of the year 1904, make large purchases of stock of the said Atchison, Topeka & Santa Fe Railway Com-

pany, aggregating, as complainant is informed and believes, at least \$30,000,000 par value of said stock, and after making said purchases the said defendants Schiff, Harriman, and Frick demanded of the officials of the said Atchison, Topeka & Santa Fe Railway Company, who held the proxies of the holders of a majority of the stock of said company, that certain of said parties so engaged in said conspiracy should be chosen and elected as directors of said Atchison, Topeka & Santa Fe Railway Company; that pursuant to said demand, and by reason of the fact that under the cumulative system of voting which was provided for in the charter of said railway company, the holders of the amount of stock so controlled by said defendants Schiff, Harriman, Kahn, Stillman, Rogers, and Frick would have been able to elect two directors of said company, the said officials consented and agreed that said defendants Rogers and Frick, who had united themselves with the said conspiracy so originally made by said Harriman, Schiff, Kahn, and Stillman, and the various railway companies hereinbefore mentioned, might be elected as directors of said Atchison,

Topeka & Santa Fe Railway Company, and during the said  
789 year 1904 the said defendants Frick and Rogers were so elected as directors of said Atchison, Topeka & Santa Fe Railway Company, and have since served and are still serving as such directors, and that by means thereof the said Union Pacific Railroad Company, of which said Rogers and Frick are, and during all of said times have been, directors, and in which they are largely interested, has had knowledge of the affairs and business of said Atchison, Topeka & Santa Fe Railway Company;

That in the summer of 1906, for the purpose of making more certain and effective the restraint of trade and elimination of competition and the monopolization of commerce hereinbefore referred to, the said Harriman and his co-conspirators, including said Union Pacific Railroad Company, caused to be purchased by said Union Pacific Railroad Company \$10,000,000 par value of the stock of said Atchison, Topeka & Santa Fe Railway Company, and said Union Pacific Railroad Company is still the owner and holder thereof, as complainant is informed and believes;

That pursuant to said partial control of said Atchison, Topeka & Santa Fe Railway Company so obtained by said Harriman and his associates, including said Union Pacific Railroad Company,  
790 competition between the system of railways so controlled by said Union Pacific Railroad Company and said Atchison, Topeka & Santa Fe Railway Company has to a large extent been eliminated; that the said conspirators have caused the said Southern Pacific Company to abandon certain extensions, improvements, and additions to their said interstate railway in the State of California, and the said Atchison, Topeka & Santa Fe Railway Company has

been in the same manner caused and induced to abandon extensions and additions to its said interstate railway lines in said State of California, and said extensions so projected and partially completed have been amalgamated, and the title to the said property placed in the name of a new corporation known as the "Northwestern Pacific Railway Company," the stock of which is owned in equal parts by said Southern Pacific Company and said Atchison, Topeka & Santa Fe Railway Company under a contract by which the control of said lines, additions, and extensions is to be in alternate years exercised by said two companies, respectively, but for the common benefit of said two corporations; and the lines of railway of said Union Pacific Railroad Company, said Southern Pacific Company, and said Atchison, Topeka & Santa Fe Railway Company are operated in harmony with each other under agreements and understandings  
791 as to rates and divisions of business.

That all of the said acts hereinbefore enumerated have been done pursuant to the said conspiracy so originally formed by certain of the defendants, as fully set forth in this bill, and in which said conspiracy and confederation said other defendants joined from time to time, as above alleged.

VIII. In consideration whereof, and inasmuch as adequate relief in the premises can only be obtained in this court, the United States of America prays your honors to order, adjudge, and decree that the combination and conspiracy hereinbefore described is unlawful and that all acts done or to be done to carry it out are in derogation of the common rights of all the people of the United States and in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and that the defendants, and each and every one of them, and their officers, directors, stockholders, agents, and servants, and each and every one of them, be perpetually enjoined from doing any action in pursuance of or for the purpose of carrying out the same, and in addition that the several defendants be respectively enjoined as follows:

792 1. That the defendants, the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, and their respective officers, directors, executive committees, and their respective agents and servants, and each and every one of them, be perpetually enjoined from purchasing, acquiring, receiving, holding, voting (whether by proxy or otherwise), or in any manner acting as the owner of any of the shares of the capital stock of either the Northern Pacific Railway Company, the Great Northern Railway Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, the Atchison, Topeka & Santa Fe Railway Company, and the Southern Pacific Company.

2. That the defendant Northern Pacific Railway Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, or any person or corporation whatsoever, in their interest or in the interest of any one of them, as the owner or holder of any shares of its capital stock, and from permitting said companies, or any person or corporation in their  
793 interest or acting for them, to vote such stock, whether by proxy or otherwise, and be further enjoined from paying any dividends upon such stock to either of said companies, or any person or corporation acting for them, or any assigns of said companies, or any person or corporation acting for them, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by said companies, or any of them, or any person or corporation in their interest, of such stock unless authorized by this court.

3. That the defendant Great Northern Railway Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Union Pacific Railroad Company, Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, or any person or corporation whatsoever, in their interest or in the interest of any one of them, as the owner or holder of any shares of its capital stock, and from permitting said companies or any person or corporation in their interest or acting for them to vote such stock, whether by proxy or otherwise, and be further enjoined from paying any dividends upon such stock to either of  
794 said companies, or any person or corporation acting for them, or any assigns of said companies, or any person or corporation acting for them, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by said companies, or any of them, or any person or corporation in their interest, of such stock, unless authorized by this court.

4. That the defendant Atchison, Topeka & Santa Fe Railway Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, or any person or corporation whatsoever, in their interest or in the interest of any one of them, as the owner or holder of any shares of its capital stock, and from per-

mitting said companies or any person or corporation in their interest or acting for them to vote such stock, whether by proxy or otherwise, and be further enjoined from paying dividends upon such stock to either of said companies, or any person or corporation acting for them, or any assigns of said companies, or any person or corporation acting for them, unless authorized by this court, and from  
795 recognizing as valid any transfer, mortgage, pledge, or assignment by said companies, or any of them, or any person or corporation in their interest, of such stock, unless authorized by this court.

5. That the defendant Southern Pacific Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, or any person or corporation whatsoever, in their interest or in the interest of any one of them, as the owner or holder of any shares of its capital stock, and from permitting said companies, or any person or corporation in their interest or acting for them, to vote such stock, whether by proxy or otherwise, and be further enjoined from paying any dividends upon such stock to either of said companies, or any person or corporation acting for them, or any assigns of said companies, or any person or corporation acting for them, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by said companies, or any of them, or any person or corporation in their interest, of such stock, unless authorized by this court.

796 6. That the said San Pedro, Los Angeles & Salt Lake Railroad Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Oregon Short Line Railroad Company or said Harriman as the nominal holder of the stock in said San Pedro, Los Angeles & Salt Lake Railroad Company, issued for the benefit of said Oregon Short Line Railroad Company, or said Farmers' Loan & Trust Company as the depository of said one-half of the capital stock of said San Pedro, Los Angeles & Salt Lake Railroad Company, as the owner or holder of any shares of the capital stock of said San Pedro, Los Angeles & Salt Lake Railroad Company; and be further enjoined from permitting such parties, or any of them, or any person or corporation in their interest, to vote such stock, whether by proxy or otherwise, and from paying any dividends upon such stock to any of said parties, or their assigns, unless authorized by this court; and from recognizing as valid any transfer, mortgage, pledge, or assignment by said Oregon Short Line



Railroad Company or said Harriman or said Farmers' Loan & Trust Company unless authorized by this court.

797     7. That the defendant Farmers' Loan & Trust Company, its trustees, officers, agents, servants, and all persons acting under its authority, be perpetually enjoined from voting the said stock, or any stock of the said San Pedro, Los Angeles & Salt Lake Railroad Company held by it under the said agreement Exhibit B, at any meeting of the stockholders of said railroad corporation; and that said Farmers' Loan & Trust Company be perpetually enjoined from transferring or assigning the said stock, or any of the same, unless authorized by this court.

8. That said defendant W. A. Clark, his agents, servants, and all persons acting by, through, or under him, be perpetually enjoined from in any manner carrying out the said contract Exhibit B, and from voting, either personally or through any proxy or representative, any of the stock of said San Pedro, Los Angeles & Salt Lake Railroad Company for the purpose of carrying out the said unlawful combination in restraint of trade and commerce.

9. That the individual defendants named, and their associate stockholders, and each and every person combining or conspiring with them and their trustees, agents, and assigns, present or future, and each and every one of them, be perpetually enjoined from  
798     doing any and every act or thing in furtherance of the combination or conspiracy, or tending to carry out the conspiracy, described in this bill of complaint, or intended or tending to complete control or partial control of said competing lines of railway by the said Union Pacific Railroad Company, the Oregon Short Line Railroad Company, or the Oregon Railroad & Navigation Company, or their officers, directors, and executive committees, or in the control, legal or practical, of any person or persons, association or corporations, acting for or in lieu of said Union Pacific Railroad Company or the Oregon Short Line Railroad Company or the Oregon Railroad & Navigation Company, in the carrying out of the unlawful combination or conspiracy hereinbefore alleged.

10. That each and all of the acts and doings of said defendants in pursuance of said conspiracy be decreed to be in violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraint and monopolies," and the acts amendatory thereof, and that a writ of injunction, mandatory or otherwise, as may be necessary, issue out of this court enjoining the said defendants, and each and every one of them, and commanding the said defendants, and each and every one of them,  
799     their officers, directors, servants, and agents to desist from the said unlawful acts, and that they and each of them, and all and each of their respective directors, officers, agents,

servants, employees, and all persons acting under or through them or either of them, or in their behalf, or claiming so to act, be enjoined, restrained, and prohibited from entering into, taking part in, or performing any contract, combination, or conspiracy the purpose or effect of which will be as to said trade and commerce among the several States and Territories and with foreign nations to restrain trade or to monopolize and attempt to monopolize said trade and commerce in violation of the provisions of the said acts of Congress.

11. And the complainant, the United States of America, prays for such other and further relief as the nature of the case may require and the court may deem proper in the premises; to the end therefore that the United States of America may obtain the relief to which it is justly entitled in the premises, may it please your honors to grant unto it writs of subpoena directed to the said defendants, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, San Pedro, Los Angeles & Salt Lake Railroad Company, Atchison, Topeka & Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, and their co-conspirators whose names are unknown to the complainant, as such names may become known to complainant and the court be advised thereof, and to each of them, commanding them and each of them to appear herein and answer (but not under oath) the allegations contained in the foregoing petition and abide by and perform such order or decree as the court may make in the premises; and that pending the final hearing of this case a temporary restraining order and temporary writ of injunction may issue enjoining the defendants and their associates, and each of them, and their stockholders, directors, officers, agents, and servants, as hereinbefore prayed.

HERMAN E. BOOTH,  
*Attorney for the United States*  
*for the District of Utah.*

CHARLES J. BONAPARTE,  
*Attorney General of the United States.*

MILTON D. PURDY,  
*Assistant to the Attorney General.*

FRANK B. KELLOGG,  
C. A. SEVERANCE,  
*Special Assistants to the Attorney*  
*General of the United States.*

## Exhibit A.

Clark-Harriman agreement, July 9, 1902.

This agreement made and entered into this ninth day of July, 1902, by and between William A. Clark, hereinafter designated as Clark, trustee, for his own account and upon account of his associates, who are, with himself, owners of approximately seventy per cent of the capital stock of the California Improvement Company, hereinafter called the California Company, and of the capital stock of the Empire Construction Company, hereinafter called the Empire Company, and who own or control, through stock or otherwise, the San Pedro, Los Angeles & Salt Lake Railroad Company, hereinafter called the San Pedro Company, and Los Angeles Terminal Land Company, and Los Angeles Terminal Railway Company, as party of the first part, and Edward H. Harriman, hereinafter designated as Harriman, trustee, as trustee for the Oregon Short Line Railroad Company, hereinafter called the Short Line Company, or such company or companies as he may declare parties to said trust, party of the second part, witnesseth:

Whereas said California Company is a corporation existing under the laws of the State of Illinois, having an issued capital stock of \$2,599,000, but no funded or other debt, and is the owner of all the capital stock of the said Los Angeles Terminal Land Company in the amount of \$300,000, and is also the owner of all the capital stock of the said Los Angeles Terminal Railway Company in the amount of \$3,000,000, all of which capital stock of said two last-named companies is now in the treasury of said California Company; and the said California Company also owns 25,000 shares of the capital stock of the San Pedro Company in the aggregate amount of \$2,500,000 par value, which stock of said San Pedro Company is now issued to and held by William A. Clark and R. C. Kerens in trust for the stockholders of said California Company, as their interests may appear; said capital stock of all said companies being divided  
803 into shares of \$100 each; and also owns and claims the right to receive and obtain from said San Pedro Company, to be delivered to W. A. Clark and R. C. Kerens, as trustees for its stockholders as their interests may appear, \$2,500,000 par value of the first mortgage bonds of said San Pedro Company when the same shall be hereafter issued; and

Whereas all of the railroad, franchises, rights of way, terminal facilities, and railroad property, and all other property, real, personal, and mixed, acquired by the Los Angeles Terminal Railway Company has been by said company sold and conveyed to the San Pedro Company; and

Whereas the Empire Construction Company is a corporation of the State of Utah organized for the purpose of providing for the financing, construction, and equipment of the railroad of said San Pedro Company, with a capital stock of \$1,000,000, divided into shares of \$100 each par value, all of which capital stock has been subscribed for and has been fully paid up and issued; and

Whereas said William A. Clark for himself and his said associates, in whose behalf he now owns or directly controls approximately seventy per cent of the capital stock of the California Company, the Empire Construction Company, and the San Pedro Company, and the remainder of said capital stock, being approximately thirty per cent of said capital stock of said companies, is owned, held, or controlled by others not directly represented by said Clark; and

Whereas the assets of said Empire Company consist of its claims against and contracts with the said San Pedro Company for money advanced, work done, and material furnished on account of the improvement and acquirement of railroad property for said San Pedro Company; and

Whereas the San Pedro Company is the owner of the railroad, equipment, rolling stock, terminal properties, station grounds, and all real, personal, and mixed property formerly owned by the Los Angeles Terminal Railway Company, and also owns certain other railroads, railroad properties, franchises, rights of way, roadbeds, stations, station grounds, water stations, equipment, rolling stock, tools, machines, machinery, supplies, and other property procured for and intended to be used as a part of the railroad property of the said San Pedro Company and situated in the States of California, Utah, and Nevada, all of which property is free and clear of any debts, incumbrance, or charges except the indebtedness to the said Empire Company, and its promise to execute and deliver, when issued, its said first-mortgage bonds in the aggregate par amount of \$2,500,000 to William A. Clark and R. C. Kerens, trustees for said stockholders of said California Company, as aforesaid; and

Whereas the said Los Angeles Terminal Land Company is the owner of certain real estate situated in Los Angeles County, California, including a tract of real estate situated on or near the harbor of San Pedro, in said county and State, all of which property of said Los Angeles Terminal Land Company is free and clear of all incumbrances, liens, and claims of every kind; and

Whereas said Short Line Company is the owner of and controls and operates a system of railroads generally described as follows:

A line of railroad extending from Granger, Wyoming, to the western boundary of said State, thence across the State of Idaho and

to a terminus at the town of Huntington, Oregon, with branch lines connecting therewith;

Also a line of railroad extending from Salt Lake City, Utah, northerly through Ogden, Utah, to the northern boundary of the State of Utah, and thence north across the State of Idaho to a terminus at Silver Bow, Butte, and Garrison, in the State of Montana, with branch lines connecting therewith; the line between McCammon and Pocatello being common to both said lines;

Also a line of railroad extending from Salt Lake City, Utah, southerly through Juab to Milford and Frisco, Utah, together with a branch line extending from Lehi Junction into the Tintic mining district and the branch lines connecting therewith, and also a branch line known as the terminus line, together with various controlled, owned, and auxiliary lines of railroad in the above-named States and the States of Nevada and California.

The Short Line Company, through ownership of capital stock, also owns and controls the railroads of the Utah & Pacific Railway Company, the Utah, Nevada & California Railroad Company (in Nevada), and the Utah, Nevada & California Railroad Company in California, and the new East Tintic Railway Company; and

Whereas the said railroads of the Short Line Company are operated in harmony with and as connections of the railroads of the Union Pacific Railroad Company extending from its terminus near Ogden, Utah, easterly through the States of Utah, Wyoming, Colorado, and Nebraska to a terminus at Council Bluffs, Iowa, and extending from Cheyenne, Wyoming, to Denver, Colorado, and thence easterly through the State of Kansas to a terminus at Kansas City, Missouri, with branch and auxiliary lines in the States of Utah, Colorado, Kansas, and Nebraska; and said lines of railroad of the Short Line Company are also operated in connection with a certain line of railroad of the Southern Pacific Company commencing at Ogden, Utah, and extending westwardly through Utah and Nevada and into California and beyond; and

Whereas the San Pedro Company and the Short Line Company and its auxiliary companies under their respective charters each have power to construct a line of railroad between Salt Lake City and San Pedro Harbor in southern California, via Los Angeles; and

Whereas the parties hereto desire to provide for the establishment, construction, ownership, and operation of a line and system of railroad between said termini by using therefor a part of the lines of railroad now owned or controlled by the Short Line Company, and all the railroads and properties of the San Pedro Company now owned by it or owned in its interest or for its use, and by connect-

ing said several lines, either by the construction of a new line  
808 or by securing leasehold or trackage rights over other lines of  
railroad to so connect said lines, and by means thereof to make  
one connected through line of railroad between said termini, to the  
end that the same may constitute a new through transportation line  
for the use of the business of said San Pedro Company and said  
Short Line Company and their connections, and for the carriage of  
business which may originate on or be destined to points on or be-  
yond their respective lines, or which may be delivered to them, or  
either of them, by connecting railroads, and for the carriage of busi-  
ness between stations on their respective lines and between all points  
on or beyond their respective lines, as well as to all points on or be-  
yond the lines of railroad owned or operated by the connections of  
said Short Line Company or said San Pedro Company, as aforesaid,  
upon through tariffs to be jointly made and lawfully published, and  
upon just and fair divisions of through rates and charges upon inter-  
changed business;

Now, therefore, for the purposes aforesaid and to accomplish the  
same the parties hereto have covenanted and do hereby mutually  
covenant and agree to and with each other as follows:

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## Article first.

SECTION 1. The said William A. Clark, for himself and as trustee  
for his said associates, in consideration of the premises and of the  
undertakings of said Edward H. Harriman, as trustee as aforesaid,  
hereby covenants and agrees to and with the said Edward H. Harri-  
man, as trustee as aforesaid, as follows:

That he will sell at the prices defined in section 2 hereof, and  
within six months after the date hereof cause to be assigned and de-  
livered to said Harriman as such trustee, or otherwise as provided by  
section 4 of this article, an equal undivided half interest in approxi-  
mately seventy per cent of the capital stock of each of the companies  
below named, that is to say:

(a) An undivided half interest in said approximately seventy per  
cent of the capital stock of the California Improvement Company  
held by said Clark and his associates as aforesaid, and through the  
medium of said stock an undivided half interest in said approxi-  
mately seventy per cent of \$2,500,000 par value of the first mortgage  
bonds of the said San Pedro Company by it agreed to be issued and  
delivered to said William A. Clark and R. C. Kerens, trustees as  
aforesaid.

810 (b) An equal undivided half interest in said approximately  
seventy per cent of the outstanding capital stock of said San  
Pedro company owned by said Clark and his associates but held in the

names of Clark and Kerens, trustees, and one-half of the outstanding qualifying shares issued to the names of the present stockholders of said company, about sixteen in number.

(c) An equal undivided half interest in said approximately seventy per cent of the said capital stock of the Empire Construction Company.

(d) An undivided half interest in said approximately seventy per cent of the capital stock of the Los Angeles Terminal Railway Company.

(e) An equal undivided half interest in said approximately seventy per cent of the said capital stock of the Los Angeles Terminal Land Company;

And that he will endeavor to secure all of the remainder of the stock of said several companies to and for himself and his associates as to one undivided half thereof and to and for said Harriman, trustee, as to the other undivided half thereof, and at prices satisfactory to the parties hereto as hereinafter provided.

811 SECTION 2. In consideration of the foregoing the said Harriman as trustee as aforesaid undertakes to buy an undivided half of said approximately seventy per cent of said outstanding capital stock of each said California company and said Empire Company, and to pay therefor amounts to be determined as follows: For such of said stock as is sold to him by said Clark individually he shall pay, and said Clark shall receive payment at the amount and rate which the same cost the said Clark, with four per cent interest thereon from the time he acquired the same, less any amounts which the said Clark shall have received directly or indirectly as dividends or profits from said companies or in connection with said stock; provided, however, that if no dividends or profits have been so received the entire earnings of said properties since the purchase of the stocks thereof by said Clark shall have been applied or used in the operation, betterments, or extensions of the said properties, or shall now be in the treasury of the said companies; and that as to the stock the undivided half of which is so purchased by said Harriman, as trustee, from the associates of said Clark, the prices and conditions of sale shall be the same as above provided for the purchase of the said Clark's individual  
812 stock as above provided, unless the parties hereto shall hereafter otherwise agree.

SECTION 3. The said Harriman, as trustee, further covenants and agrees that he will join with said Clark, trustee, in the purchase at prices satisfactory to both parties hereto, of the remaining outstanding approximately thirty per cent of said stocks, and that the same when so purchased for joint account of said Clark and himself as such trustees shall be transferred and assigned to and held jointly

in the names of himself and said Clark as hereinafter provided, or to and held in the name of a trust company as trustee as in section 4 hereof provided, it being the intention of this agreement that the said Clark and his associates, and the said Harriman, as trustee as aforesaid, as such trustee, shall own each an equal undivided half of all of the capital stocks of all of the above-named companies.

SECTION 4. It is hereby agreed that all of said capital stock in which an undivided half interest as aforesaid shall be purchased by said Harriman, trustee, under the provision of said sections 1, 2, and 3, hereof shall be transferred upon the books of said several companies either to "William A. Clark, trustee for himself and 813 his associates, and Edward H. Harriman, as trustee," and that

all of the capital stock of the San Pedro Company now outstanding, so to be held by joint title as above provided, shall, unless the parties hereto otherwise agree, be in like manner transferred to and stand upon the books of said companies in the names of said Clark and Harriman, trustees, together with all of the stock of the San Pedro Company which shall be hereafter issued, and as the same shall be issued, and shall be represented by certificates in the joint names of "William A. Clark, as trustee for himself and his associates, and Edward H. Harriman, as trustee," and each of the parties hereto shall have the possession and custody of certificates representing one-half in number and par value of said stock when so transferred to the parties hereto as aforesaid, and neither party hereto shall in any manner dispose of said holdings of the said capital stock of the said California Company, or said Empire Company, or of said San Pedro Company, or any part thereof, or any interest therein, for the full period of ten years after the opening for business of said through line of said San Pedro Company as in this agreement provided, without first obtaining the consent of the other party hereto, nor at any

time without giving said other party hereto the right to purchase such holdings, or interest therein, so offered for sale, on 814

as favorable terms as the same are offered for sale or agreed to be sold to any other person or company. At the end of said period of ten years the said then jointly held stock and the certificates thereof may be, and shall be at the request of either party hereto, divided between said Harriman and Clark, as trustees, according to their respective interests; provided, however, that if the parties hereto shall agree upon a trust company to be the holder of said certificate of stock, as trustee for the said "William A. Clark, trustee, for himself and his associates, and Edward H. Harriman, as trustee," all of the said several shares of stock and certificates representing the same referred to in this section shall be transferred upon the books of the said several corporations to said trust company as trustee, and certificates duly issued to it therefor as trustee, to be held by it in



trust for the parties hereto, in accordance with and subject to the terms of an agreement to be executed between the parties hereto and the said trust company concerning the holding of said shares.

The said last-named agreement shall, among other things,  
815 provide, first, that said trust company shall issue to the parties hereto certificates of interest running to the said "William A. Clark, trustee, for himself and his associates, and Edward H. Harriman, trustee," jointly, each party hereto to have possession of certificates representing one-half in number of the shares and one-half in par value thereof, which may be deposited with the said trustee; and, second, that said trust company will, from time to time, when jointly requested by the said "William A. Clark, trustee, for himself and his associates, and Edward H. Harriman, trustee," give and issue to such person or persons as said parties hereto may direct a proxy or proxies authorizing the person or persons named in said proxy or proxies to vote any and all of said stock at any meeting of the stockholders of said several companies; and, third, that said trust company shall pay over to the parties hereto, or such persons as they shall jointly direct, any and all individuals, whether of stocks, bonds, moneys, or property of any sort belonging to any of said several corporations, and which may be paid to or received by said trust company in any manner by reason of its holdings of any of said capital stock as aforesaid, together with such other provisions as may be hereafter agreed upon touching instructions which  
816 may, from time to time, be given to said trustees jointly by the parties hereto, said certificates of interest above named to be held and possessed by the parties hereto, but neither party shall in any manner dispose of said certificates of interest, or any part thereof, or of any interest therein, before the full period of ten years after the opening for business of said through line of said San Pedro Company, as in this agreement provided, without first obtaining the consent of the other party hereto to such transfer, nor at any time without giving such other party hereto the right to purchase such holdings or certificates offered for sale on as favorable terms as the same are offered for sale or agreed to be sold to any other person or company. At the end of said period of ten years said certificates of interest may be surrendered by the parties hereto, or by the holders thereof, to said trust company, which shall thereupon assign and deliver the said stock certificates so held by it to the said holders of said certificates of interest in number and par value of shares named in such surrendered certificates of interest, and said shares of stock may then be transferred upon the corporate books of said several companies accordingly. At any time thereafter said certificates of stock issued jointly to said "Clark, trustee, and Harri-  
817 man, trustee," may upon demand of either party hereto be

divided between them according to their respective interest, yet subject, however, to the right of either party hereto to purchase said stock from the other party hereto at the price and on the terms in this section hereinbefore provided.

SECTION 5. It is agreed by the parties hereto that pending the carrying out of this agreement no further stock of the California Company or of the San Pedro Company shall be issued.

SECTION 6. Upon the completion of the sale and purchase of the said one undivided one-half of the capital stock of said companies, now owned by said Clark, trustee, will, whenever requested by said Harriman, trustee, cause one-half of the membership of the directorate of each of the several companies to be vacated, and will cause directors to be nominated and named by the said Harriman, trustee, to be elected to the directorate to fill such vacancies in each and every of said several companies, but said Harriman, trustee, appreciating the advantage to be obtained by preserving the independent character of the San Pedro Company, and to that end distrubing as  
818 little as may be the present organization of said company until the through line of said San Pedro Company in this agreement mentioned is completed and in operation, will not exercise the right herein given him to name one-half of the said boards of directors unless he shall deem the exercise of such right necessary to the protection of the interests which he represents.

SECTION 7. The contract relations between the said Empire Construction Company and the San Pedro Company not having been definitely agreed to, it is mutually covenanted and agreed between the parties hereto that within six months from the date hereof a contract shall be entered into between the said Empire company and the said San Pedro company which shall be in terms satisfactory to the parties hereto.

SECTION 8. It is mutually agreed that in all matters pertaining to the construction, opening for business, and operation of the railroad of the San Pedro Company, including the purchase of equipment, the making of contracts for construction, and the purchase of material therefor, and any and all contracts establishing relations of trackage or traffic with other railway companies, the parties shall  
819 act jointly, and no such contracts or arrangements, or any of them, shall be made, or any corporate action taken by said San Pedro Company, the California Company, or the Empire Company without the approval of both parties hereto, and that in all such matters each of the parties hereto may be represented by an agent or agents to be appointed by them respectively with power to act for and in the names of their respective principals, and the said parties shall also act jointly in naming and prescribing the accounting and other officers and agents to be engaged in the oper-

ation of said companies, and each of them, and the auditor of said Empire Company shall be a person selected by the said Harriman, trustee, and upon the request of either party hereto any of said officers or agents shall be removed.

SECTION 9. It is understood that pending the carrying out of the terms of this agreement said Harriman, trustee, may by his agent or agents inspect and examine the corporate records, books, accounts, rights, and franchises of each of said several companies.

#### Article second.

SECTION 1. In consideration of the covenants of the said Clark, trustee, for himself and his associates, and also on behalf of the San Pedro Company, in this agreement written, the said Harri-  
820 man, trustee, as aforesaid, covenants and agrees with said Clark, as trustee, that he will in the time hereinafter stated, negotiate with said Short Line Company, and obtain from said Short Line Company the sale and lease to said San Pedro Company of the property hereinafter mentioned, as follows:

(Parcel 1.) A conveyance from said Short Line Company to said San Pedro Company, by good and sufficient deed, free and clear of incumbrance, of all of the following described property: The line of railroad known as the Terminus Branch of the Short Line Railroad from a point or points beginning at the connection of said branch with the yards of the Short Line Company to be agreed upon when said yards are defined as hereinafter provided, in Salt Lake City, county of Salt Lake, State of Utah, and extending in a generally westwardly and southerly direction to a point near Terminus, in the county of Tooele, State of Utah, together with a branch line of railroad extending from Saltair Junction to the salt works, in Salt Lake County, State of Utah, except that part of said line the right of way for which is to be surrendered to the United States, and also the partially completed railroad and right of way, surveys, and  
821 maps thereof, and railroad property, other than equipment, acquired by the Short Line Company for or used in connection with the construction of its proposed new line of railroad now under construction extending from a point of junction with said Terminus line above named southerly to a point known as Leamington Junction, upon payment therefor by said San Pedro Company as hereinafter provided.

(Parcel 2.) A conveyance from said Short Line Company to said San Pedro Company by a good and sufficient deed containing a covenant to save and protect that said San Pedro Company harmless from the lien or charge of the consolidated mortgage of the Oregon Short Line Railroad Company, dated March 1, 1897, and from the

liens of the income A and income B mortgages of said company, for all and singular the following described property: All the line of railroad extending from a point near Sandy and about ten miles south of Salt Lake City, Utah, to be hereafter definitely fixed by a description and agreement between the parties hereto, and running from said point southerly through Provo, Juab, and Leamington to Milford, Utah, and thence a further distance of about 17 miles to a terminus of said line of railroad at Frisco, Utah, and also all those

certain other branch lines of railroad owned by said Short  
822 Line Company which extend into what is known as the Tintic district, and which are generally described as follows: A line extending from Lehi Junction to the Tintic district, together with all branches and interest in joint tracks connecting therewith.

(Parcel 3.) A lease from the said Short Line Company for the term of ninety-nine years, granting to said San Pedro Company the general and common use for its sole and separate business, in common with the Short Line Company, of that part of the main line or lines of the said Short Line Company's railroad extending from the northerly yard limit point thereon southerly through the city of Salt Lake for a distance of about ten miles south from the southern limits of said Salt Lake City to a point on said main line to be hereafter definitely fixed, but which is to be so fixed as to admit the Short Line Company and the San Pedro Company to the unobstructed use of the side tracks and switches necessary or convenient for use of and access to the side tracks, switches, and properties of either of said companies, or to any or all of the smelters or other industrial institutions now existing or that may be hereafter established upon or near to said main tracks, together with all side  
823 tracks, stubs, spurs, switches, crossovers, standing places for cars, stations, signals, buildings, coal chutes, shops, round-houses, turntables, and every other facility or property used in connection with or appurtenant to the property or business of the Short Line Company between said northerly yard limit and said point near Sandy about ten miles south of the southerly boundary of said Salt Lake City, as above indicated.

It is agreed that the lease to be executed by the Short Line Company to the San Pedro Company, providing for the said use of the properties of the said Short Line Company from the north yard limit in Salt Lake City to the said point near Sandy, including the terminal facilities of the Short Line Company in Salt Lake City, Utah, shall be upon the consideration that the San Pedro Company shall pay, in monthly installments, a rental based upon a four per cent interest charge upon an agreed valuation of said property and the cost of any capital additions thereto hereafter made, apportioned

between said Short Line Company and said San Pedro Company upon the basis of use, but with a fixed minimum proportion to be paid by said San Pedro Company, and also a proportionate amount of the expense of maintenance, improvement, and operation of said property, including taxes, special assessments, and insurance, 824 the amounts of which rental and other payments and the rules for ascertaining the same, together with rules for governing extensions and betterments, and the cost, rental, and use thereof, and rules governing the operation of said yard shall be agreed to by the operating officials of said Short Line Company and said San Pedro Company, subject to the approval of the parties hereto, and which shall then be incorporated in said contract of lease, together with all formal provisions usual to such contracts.

The said property, the use of which for its own separate business is let to the San Pedro Company, shall be managed and controlled by the Short Line Company, provided, however, that for cause upon demand of the San Pedro Company, after thirty days' written notice, to be given to the general manager of the Short Line Company by the San Pedro Company, a competent superintendent for the same shall be jointly chosen by the respective presidents of the San Pedro Company and the Short Line Company, who shall be charged with the care, management, and operation of said property, to the end that the rights and privileges of the said parties thereto under this agreement shall be fully secured and preserved. Said superintendent shall be removed or discharged upon reasonable notice upon 825 the written demand of either party to said lease given to the other party.

(Parcel 4.) The Short Line Company is the owner of all of the capital stock and first-mortgage bonds of the Utah & Pacific Railway Company, which owns a line of railroad extending from Milford, Utah, to the Nevada-Utah State line at a point known as Uvada, and said Short Line Company owns all of the capital stock of the Utah, Nevada and California Railroad Company, a corporation of the State of Nevada, which owns a railroad extending from the Utah-Nevada State line, at the point aforesaid, southerly to Calientes, in Lincoln County, Nevada, and a right of way and partially constructed roadbed for a line of railroad extending from said Calientes to a point near Pioche, in said Lincoln County, and also a right of way and partially constructed roadbed for a line of road extending from said Calientes southwesterly across the State of Nevada to the Nevada-California State line; and said Short Line Company also owns all of the capital stock of the Utah, Nevada & California Railroad Company in California, a corporation of the State of California, which claims or owns a right of way extending from the Nevada-California State line to a point on the railroad of

the Santa Fe Company near Ludlow, Cal., and other railroad  
826 properties; said Short Line Company also owns all of the  
capital stock of the New East Tintic Railway Company, which  
last-named company owns a line of railroad in the Tintic district.

The said Harriman, trustee, undertakes and agrees to procure from  
the Short Line Company an agreement to sell to the San Pedro Com-  
pany, upon payment of prices to be fixed as hereinafter provided, all  
of the capital stock and first-mortgage bonds of each of the follow-  
ing-named companies: The said Utah & Pacific Railway Company,  
the said Utah, Nevada & California Railroad Company, the said  
Utah, Nevada & California Railroad Company in California, and  
the said New East Tintic Railway Company, and an agreement from  
the Short Line Company that it will, upon the request of the San  
Pedro Company, if necessary, act with the said San Pedro Company  
in procuring from each of the said several companies lastly above  
named a cancellation of the first-mortgage bonds and the release and  
satisfaction of the said first mortgages, and also in procuring con-  
veyances to said San Pedro Company from each of said four com-  
panies above named of all the railroad, franchises, and other property  
owned by said companies, respectively, so as to vest the said San

Pedro Company with the full title to and ownership in all of  
827 said railroads, franchises, and other property in this para-  
graph mentioned.

(Parcel 5.) The said Harriman, trustee, as aforesaid, undertakes  
and agrees that said Short Line Company will sell and convey to  
the San Pedro Company such a proportion of its equipment appro-  
priate and proper for use upon and heretofore assigned to use upon  
its lines of railroad south of Salt Lake City above referred to as may  
determine between the chief operating officers of said companies,  
upon being paid therefor, the value of said equipment as the same  
shall be found and determined by the joint action of the superintend-  
ent of motive power of the parties hereto, and said Clark, as trustee,  
undertakes that said San Pedro Company will buy said equipment  
and pay for the same on the delivery thereof at the price so found  
and determined.

SECTION 2. The said Clark, trustee as aforesaid, in consideration  
of the covenants and agreements of the said Harriman, as trustee as  
aforesaid, as written in this article, hereby undertakes and agrees  
that he will negotiate with and obtain from said San Pedro Company  
a covenant and agreement on its part that it will buy from the said  
Short Line Company and pay for all of the properties referred to  
and described in this article as parcels 1, 2, 4, 5. and that the  
828 value of the said railroads and properties to be conveyed by  
the Short Line Company described in said parcels shall be as-  
certained and determined, except as to said equipment, in the follow-

ing manner: By a fair estimate of the value thereof, to be agreed upon by the parties hereto, based upon the cost, which is to be the minimum factor, and upon the earning power of the said railroads, franchises, and properties, capitalized at four per cent per annum, respectively described in said several parcels in this article, and that the aggregate value of all of said several properties referred to in said several parcels shall constitute the purchase price thereof to be paid by the San Pedro Company to the Short Line Company upon making the conveyance, transfers, and assignments as aforesaid.

Said agreements shall provide that said San Pedro Company will and shall assume all the obligations of the Short Line Company to contractors and others in respect to the location, relocation, construction, and reconstruction upon the premises described in parcel 1 hereof, and will carry out, fulfill, and perform all of the said Short Line Company's obligations in respect to said work, and will use

the said new work when completed as part of the San Pedro  
829 Company's main line of railroad, and that said San Pedro

Company will accept said lease for the property described in parcel 3 on the terms above written.

All said conveyances, assignments, and transfers and said lease to be made and delivered, and considerations therefor paid contemporaneously with the exchange of stock and the execution of the agreement hereinafter mentioned are to be accomplished within six months from the date hereof.

### Article third.

SECTION 1. The said Harriman, as trustee, further covenants and agrees that he will negotiate with the Southern Pacific Company, and, if possible, obtain from said company the right for the San Pedro Company to use the tracks of the Southern Pacific Company from the point of its junction with the tracks of the Southern California Company at or near Colton to the point of junction with the tracks of the San Pedro Company at or near Riverside, at a rental that will not exceed four per cent per annum on one-half the valuation of the property of the Southern Pacific Company so used, and a share of the cost of maintenance thereof, including taxes, in proportion to the use of said tracks and property on a wheelage basis.

830 SECTION 2. The said Harriman, as trustee, further covenants and agrees that he will negotiate with the Southern California Railroad Company, and if possible obtain from said company the right for the San Pedro Company to use the tracks of the Southern California Company from the point of its junction with the tracks of the Southern Pacific Company at or near Colton to the point of junction of its tracks with the tracks of the Santa Fe Pacific Company at or near Barstow, at a rental not exceeding four per cent

per annum on one-half the valuation of the property of the Southern California Company so used, and a share of the cost of maintenance thereof, including the taxes, in proportion to the use of said tracks and property on a wheelage basis.

SECTION 3. Said Harriman, as trustee, further covenants and agrees that he will negotiate with the Santa Fe Pacific Railway Company, and if possible obtain from said company the right for the San Pedro Company to use the tracks of the said Santa Fe Pacific Company between Barstow and Ludlow, California, or other point of connection of junction with the proposed line of railroad of the San Pedro Company, at a rental which shall not exceed four per cent per annum on one-half the valuation of the property of the said Santa Fe  
831 Pacific Company so used, and a share of the cost of maintenance thereof, including taxes, apportioned upon the use of said tracks and property upon a wheelage basis.

SECTION 4. Each of the several trackage contracts referred to in this article may also contain provisions requiring the San Pedro Company to pay to each of said lessors for water, fuel, and other supplies, labor or material furnished to and for the sole use of the San Pedro Company while upon the tracks of said several companies, and also the usual conditions and agreements for payment by the San Pedro Company to said several lessors for losses and damages to persons or property arising from the negligence or wrongdoing of its sole employees.

#### Article fourth.

The parties hereto, as trustees aforesaid, hereby covenant and agree to and with each other that the said San Pedro Company and the said Short Line Company shall and will, on or before the date named in section 2 of article second hereof, enter into an agreement, and agreement for a term of ninety-nine years, with each other concerning the new line of transportation and traffic substantially to the effect following:

832 (a) The said new transportation line shall consist of the line of railroad to be created, secured, constructed, and operated under the charter and franchises of the San Pedro Company. Its main line shall commence at the city of Salt Lake, Utah, and run south-  
erly via Garfield, Leamington, Milford, Calientes, and thence through the States of Nevada and California to a junction with the line of railroad of the Santa Fe Pacific Company, and thence by trackage arrangements over the lines of the Santa Fe Pacific Company, the Southern California Company, and the Southern Pacific Company to a connection with the San Pedro Company's line in California at Riverside, and thence via Los Angeles to San Pedro Harbor.



(b) But if for any reason any of said trackage arrangements referred to in article fourth cannot be obtained, then upon and along a line of railroad to be otherwise acquired or to be constructed by the San Pedro Company in lieu thereof, making and constituting a through line of railroad from the city of Salt Lake to San Pedro Harbor via Los Angeles in California.

(c) The branch lines of said new through transportation line shall be the lines of railroad heretofore operated by the Short Line  
833 Company and described in parcel 2 above mentioned and the branch lines of the San Pedro Company in southern California, and such other branch lines as may be constructed or acquired hereafter by said San Pedro Company, it being understood that the San Pedro Company shall not hereafter extend its main line of railroad as herein defined, or any branch lines of railroad, or construct or build any line of railroad, or aid any other company or companies in the construction or building of any line or lines of railroad, nor assist or advise in building or constructing any other line of railroad northward or into the territory northward of the parallel of Salt Lake City, Utah.

(d) Said agreement shall further provide that should conditions develop hereafter which require the construction of branch lines connecting with the said San Pedro Company's road south of Salt Lake City the construction of such lines shall be subject to agreement before the commencement thereof, providing, however, that if either party objects to the construction the other may build said branches and connect the same with the main line of said San Pedro Company and be entitled to an interchange of traffic with it upon reasonable terms, it being understood that said branch lines shall not  
834 directly or indirectly invade the territory of the Short Line Company north of Salt Lake City, nor be built for the purpose of diverting business naturally tributary to the Short Line Company's road north of Salt Lake City. On the other hand it is agreed and understood that the Short Line Company shall not build branch lines which will invade the territory of the San Pedro Company South of Salt Lake City or divert business which would be naturally tributary to the San Pedro Company's road south of Salt Lake City.

SECTION 2. The San Pedro Company will in said contract agree to construct the railroad from a junction on the line of the Santa Fe Pacific Company's road above mentioned, near Ludlow, or some other agreed point on said line in California, to a connection with the Short Line Company's present road at Calientes, Nevada, and that all of the line of railroad constructed, reconstructed, or to be constructed by the San Pedro Company, and which is to become a portion of the main line thereof, shall be constructed with not less than

seventy-five pound rail and shall be completed and equipped as first class in every respect, the construction and equipment to be of a standard equal at least to that already adopted by the San Pedro Company upon that portion of its road heretofore constructed in southern California.

835      SECTION 3. The Short Line Company will in said contract undertake for itself and its connections, the Union Pacific Railroad Company, and the roads of the Southern Pacific Company, to join with the San Pedro Company in forming through lines of service necessary for the interchange of any and all business which can be carried over said Short Line and its connections in conjunction with said San Pedro Company's road to and from all points which may be reached via Salt Lake City on as favorable terms and conditions as are offered by any carriers competing for the same business.

SECTION 4. In said contract provision shall be made by the parties thereto for the adoption of classifications governing through or interchanged traffic, for the making of through and joint tariffs and rates, and the maintenance thereof, and the publication thereof, as required by law, and provision shall also be made for just and equitable divisions of all such agreed through rates and charges respecting all interchanged business.

SECTION 5. Said agreement shall also contain the following provision:

836      "It is agreed that the interchange of traffic by and between the San Pedro road, on the one hand, and the Short Line Company and the Union Pacific Company, on the other hand, as against any competitor of said Short Line Company or said Union Pacific Company, shall be preferential, but not exclusive, except as hereinafter provided, in favor of said Union Pacific Company; and, in like manner, that the interchange of traffic by and between said Short Line Company and said Union Pacific Company, on the other hand, and the San Pedro Company, on the other hand, as against any competitor of the said San Pedro Company, shall be preferential, but not exclusive, except as hereinafter provided, in favor of the San Pedro Company:

"That is to say,

"Whereas the value of the Short Line Company of its lines in Utah south of Salt Lake City, the transfer of which to the San Pedro Company is hereinbefore provided, consists largely of their relation as feeders of said Short Line Company and said Union Pacific Company, and, whereas it is not practicable to capitalize the value to said Short Line and said Union Pacific Company of said lines south of Salt Lake City as feeders of traffic, or in any other manner to compensate said Short Line Company and said Union

Pacific Company for the loss which would result from the  
837 diversion to other carriers of the traffic moving to and from  
points on said lines in Utah south of Salt Lake City.

"Now, therefore, it is mutually agreed and understood that all traffic which is either taken up or laid down on the lines of the San Pedro Company in Utah for transportation to or from any and all points which can be reached with reasonable expedition by way of the lines of said Short Line and said Union Pacific Company and their respective connections shall be forwarded exclusively, in so far as that may lawfully be done, by way of and over the lines of said Short Line and said Union Pacific Company. In consideration whereof said Short Line and said Union Pacific Company undertake and are bound hereby to solicit the transportation of traffic to or from points in Utah reached by the roads of said San Pedro Company exclusively in connection with said San Pedro Company against any and all said San Pedro Company's competitors.

"Whereas the owners of said Short Line and said Union Pacific Company had projected and proposed to build a railroad from Calientes, Nevada, to Los Angeles, Cal., or to a connection with a  
838 railroad already constructed which would give entrance to  
Los Angeles and other points in southern California; and  
whereas the value to said Short Line and said Union Pacific Company of said projected line from Calientes to southern California consisted largely in the profit to be derived from the carriage over the line or lines of road north of Calientes, Nevada, and east of Ogden, Utah, now owned and controlled by said Short Line and said Union Pacific Company, or by persons or companies friendly to said Short Line and said Union Pacific Company, of the traffic interchanged by points on the line of, or to be reached by way of, the line of said projected line between Calientes, Nevada, and Los Angeles, California, with points north of Calientes, Nevada, and Ogden, Utah, reached by or by way of the roads owned or controlled by said Short Line and said Union Pacific Company, or by companies friendly to them; and whereas, by the sale of or by the transfer by lease or purchase to the said San Pedro Company of the lines of said Short Line Company south of Salt Lake City, Utah, and the Utah, Nevada & California Railroad between Calientes, Nevada, and Uvada, and the Utah & Pacific Railway between Uvada and Milford, Utah, and the abandonment of its projected line between  
Calientes, Nevada, and Los Angeles, California, in favor of  
839 the line proposed to be built by the San Pedro Company, the  
said Short Line and said Union Pacific Company are deprived of the profit to be derived from the ownership and control of a railroad line from Salt Lake City, Utah, to Los Angeles, California,

which might be lawfully conducted in the interest of said Short Line and said Union Pacific Company.

"Now, therefore, it is covenanted and agreed, in part consideration of the transfer to said San Pedro Company of the ownership or control of the lines of the Short Line Company south of Salt Lake City, in Utah, and of said Utah, Nevada & California Railroad between Calientes, Nevada, and Uvada, and the Utah and Pacific Railway between Uvada and Milford, Utah, and the abandonment of its purpose to build said projected line from Calientes, Nevada, to Los Angeles, California, or to said point of connection with a railroad which would give it entrance to Los Angeles, Cal., as follows:

"To unite the roads now owned by said San Pedro Company, or transferred to it by this instrument, or hereafter constructed by it, to form a connected line of railroad between Salt Lake City, Utah,

and Los Angeles, California, and other points in California

840 and the roads of the Short Line and Union Pacific Company,

so as to form a through line of transportation service between points in California on the said San Pedro Company's roads and points east of Ogden, Utah, on or to be reached by way of the Union Pacific Company's lines and its connecting railroad lines. It is further understood and agreed that in so far as it may lawfully be done and profitably that said through line shall be operated and worked as a unit with respect to all traffic which is, in whole or in part, the subject of competition by other carriers. To this end it is understood and agreed that each of the parties hereto will work, in so far as they lawfully may, to promote the interests of said through line against any other line competing in whole or in part for the same traffic, and each party to said through line is bound in good faith in every lawful way to preferentially promote the interest of said through line in the conduct of all traffic which may be lawfully, reasonably, and profitably conducted by said through line against any and all competitors of said through line.

"But this obligation of preference is not to be understood or to be construed as requiring either party hereto to refuse or neglect to receive and properly forward any of the traffic referred to in

841 this subdivision which shall be offered for transportation by other connecting carriers, nor so as to require either party

hereto to refuse or neglect to receive and duly forward in accordance with shipper's instructions any traffic for which the shipper thereof shall have given or tendered written instructions, directing that said traffic be delivered for forwarding to destination to a connecting carrier other than a party hereto; provided, however, that the through rates and the subdivisions of said through rates for traffic thus provided to be interchanged with carriers other than parties

hereto shall not be less than those which at the same time are offered and in effect by or by way of the said through line, and each of the parties hereto is bound to the other party and agrees not to join any connection in through rates which are lower than those which are at the same time in effect or obtainable by the use of said through line, nor to engage with any carrier in any device or practice whatsoever designed to, or which shall have the effect of giving said connection an advantage or preference over said through line or any part thereof in soliciting or carrying the business properly subject to carriage by said through line."

SECTION 6. Said agreement shall also contain the following provision:

"No arrangement, contract, covenant, or agreement for shipment or carriage of persons or property shall be made, permitted, or suffered by either party hereto with any other transportation company or carrier by means whereof any such carrier or transportation company shall have or enjoy directly or indirectly any better rates or have any better divisions of through rates or better transportation facilities or service than are had or enjoyed by either of the parties hereto with the other party."

SECTION 7. Said agreement shall also contain the following provision:

"Nothing contained herein shall be construed as limiting the rights or privileges of the Union Pacific Railroad Company or of the Southern Pacific Company or of the Short Line Company in respect to interchange of traffic each with the other."

SECTION 8. Said agreement shall also contain the following provision:

"Said Short Line Company is bound for itself and undertakes to secure a like obligation upon the part of the Union Pacific Company and the roads of said Southern Pacific Company to deal with said San Pedro Company in the matter of interchange of traffic in respect to rates of charge for all traffic and the divisions of said rates and in respect to class and quality of service as they, respectively, deal with each other or with the most favored connection, and not to discriminate in any respect in favor of each other or of any connecting line to the prejudice and disadvantage of said San Pedro Company."

SECTION 9. Said agreement shall also contain the following provision:

"It is covenanted and agreed that said Short Line Company and its connection, the Union Pacific Railroad Company, and each of them, shall have the right to name and make the through rates between points (that is, in both directions) on or reached via their

respective lines, and points on the line of said San Pedro Company in Utah, for business which said Short Line Company or said Union Pacific Company might give to or receive from said San Pedro Company in competition with any and all other connections of said San Pedro Company; provided, however, that on demand said Short Line Company and said Union Pacific Company shall join said San Pedro Company in any through rates necessary to meet  
844 the rates offered by any competing through line for such business."

SECTION 10. Said agreement shall also contain the following provision:

"Each party hereto hereby covenants and agrees with the other party that it will not discriminate in any manner whatever against the other party hereto, or any of said other party's connections, in favor of any of the competitors of either of said parties, or in favor of any other connecting carrier in respect of the class or quality of its service, or in any other respect whatever affecting rates or service."

SECTION 11. Said agreement shall also contain the following provision:

"Neither party hereto shall or will agree with or make any convention with a competitor of the other party hereto in any respect designed to or which shall have the effect of excluding such other party from the full and free opportunity to meet any rate or grant any facility offered by such competitor for any and all traffic of every sort, and that the rates and facilities necessary to meet the offers of such competitor shall be held to be common to both parties hereto, subject to established divisions."

845 SECTION 12. Said agreement shall also contain the following provision:

"Said San Pedro Company hereby covenants and agrees that it will not now or hereafter interchange traffic with any carrier connecting with it at a point in Utah south of Salt Lake City or in Nevada upon more favorable terms as to character or quality of service, nor at any lower rate of charge or lower divisions of rates, nor in any respect whatever than those governing the interchange of the same or similar traffic with the Short Line Company at Salt Lake City."

SECTION 13. Said agreement shall also contain the following provision:

"Said Short Line Company hereby further undertakes and agrees to negotiate with and secure, if possible, from said Southern Pacific Company an undertaking and agreement on its part for the interchange of traffic in southern California with said San Pedro Company in like manner and upon as favorable terms and conditions as

said Southern Pacific Company has for the interchange of traffic with the Southern California Railroad Company.

846 "The San Pedro Company covenants and agrees that it will make a covenant or agreement with the Southern Pacific Company for its (said San Pedro Company's) performance of an undertaking that it will in the first instance adopt all lawful rates, tariffs, and charges used by said Southern Pacific Company for the handling of local traffic by said San Pedro Company which is or may be subject to competition between said Southern Pacific Company and said San Pedro Company, and that thereafter neither party shall change said rates without the consent of the other party unless it may be made necessary so to do to meet the rates, charges, or tariffs of another competing line of railroad."

SECTION 14. Said agreement shall also contain the following provision:

"The parties hereto mutually covenant and agree to establish a daily through passenger train service, consisting of not less than one train each way, over their respective lines, and over the lines of railroad of the Union Pacific Company to its terminus at Council Bluffs, Iowa, and thence via its connections, if it can accomplish the same, between Council Bluffs, Iowa, and Chicago, Illinois, through to Los Angeles, California. Such joint through passenger service shall be so established and put in operation whenever 847 either party hereto shall give to the other written notice of its desire so to do. When so established the trains necessary therefore shall be made up of such cars as the managing officials of the parties hereto shall determine. The equipment of such trains shall be of the latest modern design and in all respects the equal or superior of that of competing lines. Each party shall furnish its just quota in proportion to length of haul of such equipment. The time schedules for such joint passenger train shall be no greater in point of time than the shortest time of the trains of competing lines between the same points, and the time established shall be divided pro rata per mile, reasonable allowance to be made for difference in physical conditions, unless otherwise specifically agreed. Either party hereto shall receive the through passenger trains of the other party upon delivery, and dispatch the same regularly, without any delay other than the ordinary station service required by through trains of like class, to their respective destinations. Each party hereto shall maintain all equipment used in such joint passenger service upon its own lines, and car mileage at usual rates shall be paid for all cars of either party used upon the lines of the other in the joint business."

848 SECTION 15. Said agreement shall also contain the following provision:

"It is further covenanted and agreed by and between the parties hereto that for the performance of the joint through freight service over said through line each of the parties hereto shall furnish its proportion of the cars necessary or convenient for use in the transportation of through freight, and that each party shall pay to the other the usual rates allowed for car service; that all joint through freight rates for competitive business shall be divided between the parties hereto and their respective connections, the Union Pacific Railroad Company and the Oregon Railroad & Navigation Company, pro rata per mile in proportion to the length of the haul performed by each, but all arbitrary rates, including the customary Missouri River bridge arbitraries, shall be first deducted and the remainder of the joint or through revenue then divided upon said basis: Provided, That neither party shall be required to perform any service other than switching service in connection with the other party for less than one dollar per ton, except as may be mutually agreed upon from time to time. Joint through rates for business other than that which is subject to the competition of rival carriers  
849 shall be divided pro rata per rate; that is to say, each party shall receive of such through rate a share equal to the proportion its separate local rate for identical service separately performed bears to the sum of said local rates of both parties."

SECTION 16. Said agreement shall also contain the following provision:

"Each party shall be liable for all damages to persons or property in its possession or under its charge for the purpose of transportation or storage. When the injury for which damages are claimed can not be located or arises from concealed or unknown causes the damages shall be jointly paid by the parties hereto in the proportion in which the through rates are divided, as hereinafter provided. Cars of each of the parties hereto received on the lines of the other shall be promptly returned, preference being always given to loaded cars. All carload freight shall be sent over the lines of the parties hereto without transfer, when the cars so loaded are in good condition."

SECTION 17. Said agreement shall also contain the following provision:

"It is further mutually covenanted and agreed by and be-  
850 tween the parties hereto that all joint through passenger rates shall be divided in the following proportions:

"1. When the joint passenger rate is made of the sum of the published local rates of the parties each party shall receive its local rate.



"2. If the through passenger rate shall be less than the sum of the two or more local rates, made less to meet competition or to promote the public interest, each party shall receive its local rate reduced in the precise proportion that the through rate is less than the rate made by the sum of the locals, and neither party shall in any division receive more than its published local tariffs."

SECTION 18. Said agreement shall also contain the following provision:

"Any difference that shall hereafter arise as to the meaning or the proper construction of this agreement or any part thereof, or as to the performance of any of the covenants and agreements herein contained by either party, shall first be referred to the two presidents of the said parties for settlement, and to that end the party complaining shall deliver to the said presidents a concise written statement of the matter regarding which complaint is made. If  
851 the two presidents within thirty days after receiving such complaint are unable to settle such differences so submitted, then the same shall, within thirty days thereafter, be referred to a committee of the two boards of directors to be created as provided in this article. Notice of the time and place of hearing thereof by said committee shall be given by them to the parties hereto at least ten days before the same shall be heard. Each party may submit such evidence and statements as it may think proper for the consideration of such committee at such hearing, and the decision of such committee when reduced to writing and signed by them or a majority of them shall be binding upon the parties hereto, and such written decision shall thereafter be taken and held to be a part of this agreement."

Article fifth.

It is further agreed between the parties hereto that all contracts necessary to carry out the provisions of this agreement shall be formulated and entered into by the parties appropriate to such contracts, whether hereinabove expressly provided for or not.

It is understood and agreed that the execution of this agree-  
852 ment by the party of the second part is subject to ratification and approval by the executive committee of the Short Line Company, and that the party of the first part shall be furnished with evidence of such approval when the same shall have been given.

In witness whereof the parties hereto have hereunto set their hands the day and year first above written.

WILLIAM A. CLARK,

*In Trust for Himself and His Associates.*

EDWARD H. HARRIMAN,

*As Trustee, as in Above Instrument Recited.*

## Exhibit B.

William A. Clark, individually and as a trustee.  
Edward H. Harriman, as trustee, and  
The Farmers' Loan and Trust Company.

## Stock trust agreement.

This agreement, made and entered into this 7th day of June, A. D. 1903, by and between William A. Clark, of the city of Butte, in the State of Montana, contracting for himself and as trustee for his associates, as party of the first part, Edward H. Harriman, 853 of Arden, New York, as trustee, as party of the second part, and The Farmers' Loan and Trust Company, a corporation created under the laws of the State of New York, hereinafter called the trustee, as party of the third part, witnesseth:

## Article I.

SECTION 1. The parties of the first and second parts, in consideration of the sum of one dollar to each of them in hand paid, the receipt whereof is hereby acknowledged, and in further consideration of the acceptance by the trustee of the trust hereby created, do jointly and severally sell, assign, deliver, and set over unto said trustee under the terms of this instrument, and to the successor in trust, if any, of said trustee, all and singular the following certificates of capital stock and the stock interest therein or thereby represented, viz:

1. Twenty-five thousand nine hundred and ninety shares of the capital stock of the California Improvement Company;

2. Ten thousand shares of the capital stock of the Empire Construction Company;

3. Three thousand shares of the capital stock of the Los Angeles Terminal Land Company;

854 4. Two hundred and fifty thousand shares of the capital stock of the San Pedro, Los Angeles and Salt Lake Railroad Company (including those held by the directors of said railroad company), subject to the pledge and deposit of all the foregoing shares with Kuhn, Loeb & Co., duly assigned in blank, as part of the collateral for a loan of \$25,000,000 made by said Kuhn, Loeb & Co. to said railroad company, and in order to secure the transfer of which hereunder the said parties of the first and second parts have executed an order to said Kuhn, Loeb & Co. as follows:

NEW YORK, ———, 1903.

To Messrs. Kuhn, Loeb &amp; Co.:

There have heretofore been deposited and pledged with you under the terms of a certain agreement dated June 3, 1903, between yourselves and the San Pedro, Los Angeles, and Salt Lake Railroad Company, as part of the collateral security for the loan therein provided for, two hundred and fifty thousand shares of the capital stock of the said San Pedro, Los Angeles, and Salt Lake Railroad Company; all except directors' shares being owned by William A. Clark and Edward H. Harriman.

This is to authorize and direct you, upon the payment of the loan described in said agreement with the interest thereon, and  
855 upon the satisfaction of the obligations therein contained, to deliver all of the said shares of stock to The Farmers' Loan and Trust Company, of the city of New York, to be held by said trust company under the terms of a certain stock-trust agreement dated June 7, 1903.

If hereafter you decline to make the additional loan described in said first-mentioned agreement, and are called upon to surrender the two-sevenths in par amount of said shares of stock as provided in said agreement, this directs you to deliver the stock so to be surrendered to or upon the joint order of William A. Clark and Edward H. Harriman, their executors and administrators.

San Pedro, Los Angeles, and Salt Lake Railroad Company, by  
———, president, and ———, secretary.

WILLIAM A. CLARK.

EDWARD H. HARRIMAN.

Notice of above direction accepted:

KUHN, LOEB &amp; CO.

So soon as the said shares of stock so transferred hereunder shall be received by the trustee, the same shall at once be transferred  
856 upon the books of said respective corporations into the name of the trustee, and all of the terms and conditions of this instrument shall at once attach thereto and all property in the said stock shall be deemed vested in the trustee as fully and to the same extent, and with the same force and effect, as if actual transfer and delivery of said shares of stock had been, at the time of the execution of this instrument, duly made to the trustee hereunder.

In case Kuhn, Loeb & Co. shall hereafter decline to make the additional loan of \$10,000,000 provided for in their agreement with said San Pedro Company, dated June 3, 1903, and shall surrender to the parties of the first and second parts two-sevenths in par amount of the capital stock of the San Pedro Company, the said parties of the first and second parts hereby covenant with each other that they use

the same or so much thereof as may be necessary as part of the collateral security to be given to some other lender who shall make a loan of not exceeding \$10,000,000 to said San Pedro Company, and that, upon making said loan by said other lender, the parties of the first and second parts will execute and deliver to said lender an order for the delivery of said shares of stock by said lender to the trustee, in like form as said order hereinbefore set forth, requiring  
857 said lender, upon the payment or other satisfaction of the loan and lien under which said shares may be pledged to him, to deliver said stock to said trustee for said account of said parties of the first and second parts as such trustees; and that in all other respects any shares of stock so surrendered to them by said Kuhn, Loeb & Co. shall be deemed sold, transferred, and delivered to the trustee, and shall be subject to and bound by all of the terms of this agreement.

SECTION 2. The parties of the first and second parts further covenant and agree to and with each other, and to and with the trustee, that from time to time, and when, individually or as trustee, they shall or may hereafter jointly secure by purchase or otherwise any additional shares of the capital stock of either or any of said several companies named in section 1 of this article, whether such stock be now issued or hereafter may be issued, they will immediately sell, assign, deliver, and set over to the trustee any and all such shares of stock, subject to all the terms and trusts of this agreement.

SECTION 3. The parties of the first and second parts further severally covenant and agree to and with each other, and to and  
858 with the trustee, that in case either of the parties of the first or second parts or their respective cestuis que trust shall hereafter secure, by purchase or otherwise, any further or additional shares of capital stock of any of the said companies mentioned in section 1 hereof, and not theretofore deposited with the trustee, whether such capital stock be now issued or at any time hereafter be issued by any of said companies, such acquisition, however made, shall be for and upon their joint account, at joint cost, and for the equal benefit and ownership of the parties of the first and second parts and their respective cestui que trust, and that the same shall be, whether it be stock now issued or stock which may be at any time hereafter issued by any of the said companies, if and when the cost thereof shall be borne or paid jointly by the parties of the first and second parts hereto, in like manner immediately assigned, transferred, and delivered to the trustee, and shall be and become subject to the terms hereof. But if the other of said first party or said second party shall not, on demand of the party who made such acquisition, or for whom such acquisition was made, pay one-half of the cost

thereof to the party acquiring the same, then such party who has acquired the same, may, but not otherwise, hold and own such  
859 additional shares as his own, and free from the terms of this agreement, and free from any claim of interest therein by any other party hereto.

SECTION 4. The parties of the first and second parts further covenant to and with each other, and to and with the trustee, that in case they or either of them shall in any manner or at any time hereafter secure or acquire any of said additional shares of said capital stock in any of said companies, which is now issued or may hereafter be issued by any of said companies, he or they will immediately inform and advise each of the other parties hereto of the time, manner, terms, and price at which such stock was secured or acquired, with an offer to subject the same to the terms of this agreement, and also that they will at once cause the trustee to be fully informed of any increase in capital stock of any of said companies which may at any time hereafter be authorized or made, and of the terms and conditions upon which the same is provided to be issued or is issued.

SECTION 5. The trustee shall have and hold all of the said shares of said capital stock of each of the companies mentioned in section 1 of this article, and the certificates representing the same, and which are,  
860 on the execution hereof, delivered to said trustee, as well also as any and all such shares of capital stock mentioned in sections 2 and 3 of this article, which may hereafter be delivered to the trustee, its successors or assigns, upon the trusts hereinafter specified, from and after the execution hereof and for the term of ten years from the day when the railroad of the San Pedro, Los Angeles and Salt Lake Railroad Company, or its successor, shall be opened for business from Salt Lake City, Utah, to San Pedro, California.

## Article II.

### Directors' qualifying shares.

Enough shares of capital stock in each of the said companies mentioned in Article I hereof to qualify the directorate in each of them shall be reserved from the disposition of said shares of capital stock hereinafter provided, and the same shall be assigned and transferred by the trustee to the names of the persons selected to be or who shall be from time to time elected to such directorate. Such directors' qualifying certificates of shares, however, shall be at once assigned in blank by said directors and be delivered to and held in the custody of the trustee, to be used for said purpose, but subject to the terms of this instrument.

861

## Article III.

The trustee, its successors and assigns, shall cause all of the said shares of capital stock (except those necessary to qualify the directors as aforesaid), and all the certificates thereof mentioned in Article I hereof, as well as all other shares of capital stock which may at any time hereafter be delivered to the trustee under this instrument, to be immediately and from time to time transferred to it as trustee, upon the respective transfer books of the said several companies, and thereafter the trustee shall be possessed of and hold all of the said stock and certificates as trustee under this instrument, with full power to hold the same as the owner of the legal title thereto, but subject as between the parties to this instrument and their assigns to all the trusts in this instrument declared.

## Article IV.

SECTION 1. The trustee shall issue "certificates of interest" against all of said shares of capital stock, and the certificates of capital stock which may now be, or which may hereafter be at any time issued by any of said several companies, and by or for the parties of the first and second parts deposited with and assigned to the trustee 862 to be and to become subject to the terms of this instrument, which said certificates of interest shall be issued by it to and in the names of "William A. Clark, trustee, and Edward H. Harri-man, trustee," duly certified and issued under the hand of its proper officers and entered upon correct books of record which shall be kept by the trustee, showing the details of the issuance and transfers of such certificates in the usual manner and form of well organized corporations dealing with such matters.

SECTION 2. Said certificates may be in substantially the following form:

The Farmers Loan and Trust Company,

Certificate of interest

in

(Insert name of proper company.)

No. ———— shares.

This certificate of interest is issued to ————, pursuant to the provisions of a certain stock trust agreement, dated June 7, 1903, made by and between William A. Clark, contracting for himself and as trustee for his associates, as party of the first part; Edward H.

Harriman, as trustee, as party of the second part, and the  
863 undersigned, as party of the third part, and reference to said  
agreement, an original of which has been lodged with the under-  
signed, is hereby made.

This certificate of interest is based upon ———— shares of  
the capital stock of the ———— of the par value of one hun-  
dred dollars each, which have been sold, assigned, delivered, and  
transferred to the undersigned as trustee under said agreement.

This certificate is not negotiable and not transferable, except upon  
the written consent of William A. Clark, trustee, and Edward H.  
Harriman, trustee, in the form of transfer and consent endorsed on  
this certificate, nor until this certificate shall be surrendered to the  
undersigned for cancellation, as provided by said agreement.

The holder or holders of this certificate of interest is and are en-  
titled to receive the net proceeds (after paying the cost of collect-  
ing and disbursing the same, including the trustee's fees) of any  
dividend or dividends declared or to be declared and of any funds  
which may come into the possession of the undersigned as the holder  
or owner of any of the shares of capital stock of the said ————  
——— Company in respect of which this certificate is issued.

864 At the end of the full term of ten years from the day on  
which the railroad of the San Pedro, Los Angeles and Salt Lake  
Railroad Company shall be opened for business from Salt Lake City,  
Utah, to San Pedro, California, the registered holder of this certifi-  
cate may surrender the same to the undersigned, and upon payment  
of any sums due or to become due to the trustee under the terms of  
said agreement shall be entitled to receive from the trustee certifi-  
cates in the name of such holder for the shares of capital stock in  
respect of which this certificate was issued.

By the acceptance of this certificate the holder thereof shall be  
bound by all the terms and provisions of said agreement, dated June  
7, 1903, as fully and to the same extent as if such holder were a party  
thereto and had duly executed an agreement to abide thereby; and  
no holder thereof, other than "William A. Clark, trustee, and Ed-  
ward H. Harriman, trustee," whether the cestui que trust of said  
Clark or of said Harriman, nor any other persons, shall have any  
interest, legal or equitable, in this certificate or in the shares of cap-  
ital stock upon which the same is issued, unless or until the said  
Clark, trustee, and said Harriman, trustee, shall have each in writing  
consented thereto.

865 When so assigned, this certificate shall be transferred only  
upon surrender thereof to the trustee and upon the execution

by the transferee of an agreement in the form prescribed by the said stock trust agreement.

THE FARMERS' LOAN AND TRUST COMPANY,

*Trustee.*

By \_\_\_\_\_.

Attest:

\_\_\_\_\_,  
*Secretary.*

There shall be endorsed upon said certificates of interest a form of assignment substantially in the following form:

**Assignment.**

For value received, — hereby sell, assign, and transfer unto — the within certificate of interest based upon — shares of the capital stock of the —, and all of — interest therein, and do hereby irrevocably appoint — attorney to transfer said certificate upon the books of The Farmers' Loan and Trust Company, with full power of substitution in the premises.

Dated \_\_\_\_\_.

866 No such assignment shall become effectual to pass any title to or right or interest in the said certificate, or in the shares of capital stock upon which the same is based, until there shall have been endorsed in writing thereon a consent substantially in the following form:

"Consent is hereby given to the above assignment of this certificate, and to the transfer thereof, to \_\_\_\_\_.

"WILLIAM A. CLARK, *Trustee.*

"EDWARD H. HARRIMAN, *Trustee.*

"In presence of:

\_\_\_\_\_,

Nor shall such assignment or consent be received from any intended transferee by the trustee for any purpose until such intended transferee shall have executed and delivered to the trustee, by endorsing the same upon such certificate so to be transferred, an undertaking in the following form:

"The undersigned accept this certificate, subject to all the terms and conditions of the agreement dated June 3, 1903, therein mentioned, by which the undersigned agree to be fully bound as if a party thereto, and agree — to hold all interest acquired thereby, and by any new certificate of interest, if any, issued in respect thereof under and subject to the terms of said agreement."



867        Upon the due execution of all of which and the presentation thereof to the trustee, it may, but not otherwise, cause such transfers to be made and entered of record.

SECTION 3. Said certificates of interest as to the shares of stock in each of said several companies shall be issued and delivered to the parties of the first and second parts in their joint names, in equal amount, so that each of the parties of the first and second parts shall respectively receive from the trustee each one-half in number and one-half in par value of the capital stock in each of said companies now or from time to time transferred or delivered to the trustee, and in respect of which said certificates of interest may be issued.

SECTION 4. No transfer of any of such certificates of interest shall be made by the trustee upon its books or otherwise, unless such certificates shall be first surrendered and returned to the trustee for cancellation and shall have been by it canceled; nor unless the same shall each bear endorsed thereon the written consent to such transfer signed by each of said parties of the first and second parts, nor until such proposed transferee shall in writing consent to all the terms of  
868        this instrument and agree to be bound thereby as if a party thereto, and to be bound and limited by the terms and conditions written in and endorsed upon said certificates of interest.

SECTION 5. The trustee may from time to time make such reasonable rules respecting the making and issuance of certificates of interest, and the transfer thereof, as it may find necessary; and, upon the written request of all the holders of outstanding certificates of interest, it shall make, adopt, and enforce any rule or regulation concerning the assignment or transfer of such certificates of interest, which all of said holders of outstanding certificates of interest may so request.

#### Article V.

SECTION 1. The trustee may collect any dividends paid or payable, declared or to be declared, by any of said companies, and any funds due to any of them from any source whatever, in respect of the said shares of capital stock so held by the trustee, and shall immediately, upon such receipt and collection of any such dividends or funds, pay over any such dividends or funds to the parties of the first and second parts, or their successors or assigns, ratably and according  
869        to their respective holdings of said certificates of interest representing the stock upon which such dividends or funds has been paid as appears by the records of the trustee, and may also pay over the like ratable proportion of any such dividends or funds to any registered holder of such certificates of interest, whose holding thereof was acquired by any assignment of such certificates of interest, with and upon the written consent of the parties of the first

and second parts, and upon the said transfers, consent, and undertaking, as provided by section 4 of Article IV of this agreement.

SECTION 2. The trustee will at any time, upon the written request of the parties of the first and second parts, or the successor in trust of either of them, issue to the persons jointly named by said parties of the first and second parts, or said successor, its proxy or proxies upon all of the shares of capital stock of each of said several companies then held by it and registered in its name, to be voted at any annual, special, adjourned, or called meeting, of the stockholders of any of the said companies.

SECTION 3. At least sixty days before the day of the annual meeting of the stockholders of any of the said companies, the parties of the first and second parts shall, in writing, either jointly or  
870 separately, notify the trustee of the names of the persons to whom the trustee shall issue the proxy or proxies mentioned in section 2 of this article. If the names so notified to the trustee are not identical, the trustee shall transmit to each of the parties a copy of the said notice of the other party, and unless thirty days before the day of such annual meeting the parties of the first and second parts shall have lodged with the trustee an agreement or consent to the names of the same persons to whom said proxies shall issue, it shall then be the duty of the trustee, not less than twenty days before the day of such meeting of the stockholders, to call, in writing, upon each of the parties of the first and second parts to each nominate a number of persons, not more than one-half of the number of persons to be elected as directors at such meeting, and thereupon the trustee shall issue its proxy or proxies to such person or attorney as it may select to appear at such annual meeting, and there to vote all the shares of capital stock in such company so held by said trustee, for directors thereof, one-half of the number of directors to be the persons so nominated to it for such purpose by each of the said parties of the first and second parts, respectively. Any communication  
provided to be made hereby may be made between the parties  
871 or their duly appointed attorney by letter or by telegrams sent at the expense of the trust. In case the number of directors to be chosen for any such company shall be an odd number, then the president of the trustee shall be elected as one of said directors, unless said parties of the first and second parts shall jointly nominate another person to be so elected, and the remaining directors shall be elected, one-half from the persons nominated for such office by the party of the first part, and one-half from the persons nominated for such office by the party of the second part.

SECTION 4. If the said parties shall include in their said nominations of persons to be voted for as directors by the trustee, as provided for in section 3 of this article, the names of the same person or

persons, the trustee shall, by letter or by telegram, notify each of said parties of the first and second parts of the fact of such double nomination, and in such case either of said parties may withdraw the name of the person so twice nominated and substitute the name of another person to be voted for by the trustee or its attorney in fact; but in case either of said parties of the first or second parts shall fail to nominate some person in lieu of the person so nominated by both parties, then the president of the trustee shall select some managing officer of the trustee to be voted for as such director in lieu of one of said double nominations by one of said parties.

SECTION 5. In case it shall happen at any time while the capital stock of the said several companies, or any of them, remains deposited with the trustee, that the stockholders in any of said companies shall be called at any regular or special meeting to act upon any question other than the election of directors, the trustee shall issue its proxy upon said capital stock to the person or persons whom the said parties of the first and second parts may jointly request. In case the said parties shall not agree as to the person so to be appointed, the trustee shall select some discreet and proper person to vote upon such question in such meeting in the manner and as the parties hereto may in writing request; and in case no such request shall be jointly made by said parties, then the trustee shall vote upon such question upon the stock so held by it in the manner and as the president of the trustee shall determine.

SECTION 6. The initiative in all matters in this article provided shall be taken by the parties of the first and second parts hereto, and the trustee shall not be charged with any duty except as in this article provided, in case of a failure of the said parties of the first and second parts to agree in direction to the trustee as in this instrument provided.

## Article VI.

SECTION 1. None of the stock held by the trustee under the terms of this agreement and none of the certificates of interest issued thereunder shall, until the end of the full term of the ten years hereinafter created, be in any manner or for any purpose sold, assigned, or transferred, or otherwise disposed of, or shall any interest therein or right thereto, legal or equitable, be sold, transferred, or assigned, or otherwise disposed of by either the party of the first or the party of the second part hereto except upon the consent in writing of the other of said parties first had and obtained and lodged with the trustee; nor unless the party hereto desiring to effect such sale, assignment, or transfer, or other disposition shall have first offered the

other of said parties hereto the right and opportunity to purchase the same stock certificates, interest, legal or equitable, or right, on as favorable terms, and such party shall neglect to avail himself  
874 of such opportunity for the space of thirty days.

SECTION 2. Nothing in this article, however, shall be construed to prohibit either of the said parties of the first and second parts, respectively, from making and delivering to himself or to his cestuis que trust or associates receipts or other instruments, in form negotiable or otherwise, hereinafter termed "certificates of interest," in respect of the number of shares of stock in each of said companies which he has or which such associates or cestuis que trust have deposited under said trust or with their said respective personal trustees under some agreement satisfactory to such personal trustee and to the owners of such capital stock so deposited with the said personal trustee; but such agreement or arrangement shall be so made as to provide that none of the owners of such certificates of interest so issued by either one of the said personal trustees shall, by virtue of such ownership or otherwise, in any manner interfere with the control, ownership, use, custody, and possession of said third party of the capital stock so deposited by said personal trustee with the trustee under this agreement, nor shall any such arrangement or agreement charge the trustee under this agreement  
875 with any duty to any holder of any such personal trustee certificate, nor shall the party of the third part be required to recognize any such personal trustee certificate in any manner or for any purpose whatever.

SECTION 3. At the end of the term hereby created the parties of the first and second parts covenant to and with each other and to and with the trustee to surrender to the said trustee any and all certificates of interest issued by the trustee and respectively held by them, or either of them, and thereupon the trustee may, and it hereby covenants and agrees to and with each of the other parties hereto that it will, upon the request of either of said other parties, assign the capital stock or capital-stock certificates represented by said surrendered certificates of interest jointly to and in the names of the parties of the first and second parts, and shall deliver to each of the said parties of the first and second parts the certificates of capital stock in any of said several companies which are represented by the certificates of interest issued against the said capital stock by the trustee, and which shall be surrendered to the trustee by said respective parties, or it may, upon a like surrender by the holders thereof, assign into the names of such holders of its certificates of  
876 interest and deliver to such holder or holders of its said certificates of interest the number of shares of capital stock in any of said companies, and in the par value in respect of which the

trustee had issued its said certificates of interest, provided that such holder or holders of said certificates took and held the same under the terms and upon the written consents of the said parties of the first and second parts, and upon the other conditions provided for by this instrument; and upon such assignment and delivery the said capital stock may be transferred upon the books of the said several companies into the names of such assignees. Upon any such assignment and delivery of said shares of capital stock by the trustees to the holders of any certificate of interest issued by the trustee, the trustee shall not thereafter be charged with any duty of liability in respect of any of said capital stock or certificate of interest.

SECTION 4. Each of the parties of the first and second parts covenants with the other that any and all shares of stock and stock certificates received by him, under the terms of section 3 of this article, will not be sold or offered for sale at any time after receiving the same, until the other of said parties shall have been given  
877 the right to purchase such shares of capital stock on as favorable terms as the same or any part thereof are offered for sale or agreed to be sold, or sold to any other person, firm, or company, it being the intention of each of the parties hereto to give to the other a preferential right to purchase any of said shares of capital stock upon any sale or other disposition thereof.

#### Article VII.

SECTION 1. In case the parties of the first and second parts, respectively, may desire to wind up the business, distribute the assets, or otherwise bring about a dissolution of the said California Improvement Company, the Empire Construction Company and the Los Angeles Terminal Land Company, or some of them, or for any other purpose to withdraw the shares of stock of any of said companies from the trust hereby created, then upon the surrender of the certificates of interest issued by the trustee in respect of the shares of the capital stock of any such company, the trustee may, and upon the joint request of the parties of the first and second parts shall, assign the said stock certificate and deliver the same to such person or persons as may be named in such request; and thereupon the  
878 trustee shall not be further charged in respect to any stock in or business of such company and this agreement shall no longer affect the same.

#### Article VIII.

SECTION 1. The provisions of this agreement shall be binding and in full force and effect from the date hereof and for the further full term of ten years from the day on which the railroad of the

San Pedro, Los Angeles and Salt Lake Railroad Company shall be opened for business between Salt Lake City, Utah, and San Pedro, California; and the parties of the first and second parts covenant and agree that they will cause the San Pedro, Los Angeles and Salt Lake Railroad Company to certify to the trustee the date at which it is so open for business, and that the said certificate shall be conclusive as to the fact so stated.

SECTION 2. It is nevertheless agreed by all the parties hereto that this agreement may at any time be modified, changed, or abrogated, in whole or in part, upon the consent of all of the holders of record of the said certificates of interest issued by the trustee if and when the same is approved in writing by the trustee.

### Article IX.

879 SECTION 1. The parties of the first and second parts jointly and severally covenant and agree to and with each other and with the trustee to indemnify it and to save and keep it harmless from any loss, charges, or damages which the trustee may incur by reason of its holding the legal title to or the ownership in and custody of the said several shares of capital stock in any of said several companies.

SECTION 2. They also covenant and agree to pay each one-half of the reasonable compensation to be paid to the trustee for itself and for its agents, servants, or attorneys, for anything done or to be done by them or any of them in the performance of the duties of the trustee under the terms of this instrument, and any costs, damages, or expenses incurred by the trustee in any suit or action which may be brought or conducted by any person having or claiming to have an interest in the subject-matter of the trust estate and in which the trustee may be sued or, if it elect, in which it may voluntarily appear.

### Article X.

SECTION 1. In case the said William A. Clark shall at any time die or resign as trustee for his said cestui que trust, or if he shall for any reason be unable to discharge the duties of his trust, then the  
880 holder or holders of certificates of interest, issued by said William A. Clark to himself and to the persons who deposited any of said capital stock with said Clark may, by a majority vote of all shares represented in said certificates, select some other person to be trustee in lieu and in place of said William A. Clark; and upon said selection being certified to said trustee by the written certificate of the said holders of said certificates, the cestuis que trust making such selection, the said person so selected in place of said Clark may

execute the copy of said agreement in the custody of the party of the third part, and thereafter shall in all respects, rights, duties, privileges, conditions, and matters be substituted for said Clark to all intents and purposes, as if such person had been originally the party to this instrument instead of said Clark.

SECTION 2. In case the said Edward H. Harriman shall at any time die or resign as trustee for his said cestuis que trust, or if he shall for any reason be unable to discharge the duties of his trust, then the holder or holders of certificates of interest issued by said Edward H. Harriman in respect of said capital stock may, by a majority vote of all of said certificates of interest, select some other person to be trustee in lieu and in place of said Edward H. Harriman; and upon said selection being certified to said trustee by the written certificate of the said holders of said certificates, the cestuis que trust making such selection, the said person so selected in place of said Harriman may execute the copy of said agreement in the custody of the party of the third part, and thereafter shall in all respects, rights, duties, privileges, conditions, and matters be substituted for said Harriman to all intents and purposes as if such person had been originally the party to this instrument instead of said Harriman.

In testimony whereof the said party of the first part and the said party of the second part have hereunto subscribed their names and affixed their seals; and the said party of the third part, for the purpose of signifying its acceptance of the trust herein and hereby created, has caused these presents to be signed by its president, sealed with its corporate seal, and attested by its secretary, the day and year first above written.

Signed in triplicate.

W. A. CLARK, [L. S.]

W. A. CLARK, *as trustee*. [L. S.]

EDWARD H. HARRIMAN, *as trustee*. [L. S.]

882 THE FARMERS' LOAN AND TRUST COMPANY,  
*Trustee.*

[SEAL.] By E. S. MARSTON, *President*.

Attest:

SAM SLOAN, Jr., *Sec'y*.

883 No. 993. United States Circuit Court, District of Utah.

In equity.

The United States of America, complainant, v. Union Pacific Railroad Company et al., defendants. Answer of the defendant, Edward H. Harriman. (Filed April 6, 1908.)

884 United States Circuit Court, District of Utah. No. 993. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, The Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

885 Separate answer of the defendant, Edward H. Harriman, to the original petition of the United States of America.

This defendant now and at all times hereafter saving to himself all manner of benefit and advantage of exception which can or may be taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained, or to so much and such parts thereof as he may be advised it is material or necessary for him to make answer unto, answering, says:

I. He admits that all the corporations mentioned in Subdivision I of the petition were at the times alleged in the petition and are now common carriers employed in the transportation of freight and passengers within and among those States and Territories of the United States in and through which the transportation lines owned by them respectively are located, and not further or otherwise, but were and are to that extent engaged in trade and commerce among the several States and with foreign nations.

II. (1) He denies that from January 1, 1901, or at any time he and the defendants, Jacob H. Schiff, Otto H. Kahn, and  
886 James Stillman, with certain other persons, including the defendants, Henry H. Rogers and Henry C. Frick, have owned or controlled a majority of the capital stock of the Union Pacific Railroad Company.

(2) He admits that on the 23d day of May, 1898, he became and ever since has been and still is the chairman of the executive committee of the board of directors of said Union Pacific Railroad Company; and that on the 7th day of January, 1904, he became and ever since has been and still is president of said corporation.

(3) He admits that the said Jacob H. Schiff became a director of said Union Pacific Railroad Company on the 1st day of March, 1898,



and continued to be a director of said company until the 10th day of April, 1906, when he resigned.

(4) He admits that the said Otto H. Kahn became a director of said Union Pacific Railroad Company on the 1st day of July, 1897, and continued to be a director of said company until the 10th day of April, 1906, when he resigned.

(5) He admits that the said James Stillman became a director of said Union Pacific Railroad Company on the 6th day of December, 1897, and continued to be a director of said company until the 887 13th day of February, 1908, when he resigned.

(6) He admits that the said James Stillman was a member of the executive committee of the board of directors of said Union Pacific Railroad Company from the 8th day of December, 1897, until the 13th day of February, 1908, and that the said Otto H. Kahn was a member of said committee from the 8th day of December, 1897, until the 10th day of April, 1906.

(7) He admits that during all of said time the said Jacob H. Schiff and Otto H. Kahn were and still are members of a banking firm of the city of New York, doing business under the name and style of "Kuhn, Loeb & Co.," but denies that said banking house has been or is the "fiscal agent" of the defendant Union Pacific Railroad Company; and he admits that some of the stocks referred to in the petition were bought by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company, respectively, from time to time through said banking house, and that some of the bonds issued by said companies were sold to said firm.

(8) He admits that defendant Henry H. Rogers became a director of said Union Pacific Railroad Company on the 8th day of October, 1901, and that defendant Henry C. Frick became a director of 888 said Union Pacific Railroad Company on the 11th day of October, 1904, and that both the said Rogers and the said Frick have ever since been and still are members of said board of directors.

(9) Except as herein admitted he denies each and every allegation of Subdivision II of the petition.

III. (1) He admits that defendant Union Pacific Railroad Company owns a line of railroad extending from Council Bluffs, Iowa, to Ogden, Utah, which it acquired in 1897 at a sale made under decrees foreclosing the lien of the Government of the United States thereon arising under the acts of Congress mentioned in Subdivision III of the petition and foreclosing mortgages securing bonds issued by the company incorporated under said act of Congress approved July 1, 1862, to construct said railroad, and has ever since owned said line.

(2) He admits that defendant Union Pacific Railroad Company owns a line of railroad from Kansas City, Missouri, to Denver, Colorado, which it acquired in 1898 under decrees foreclosing the lien of the Government of the United States thereon arising under the acts of Congress mentioned in said subdivision of the petition and foreclosing mortgages securing bonds issued by the "Union Pacific Railroad Company, eastern division," and the "Kansas Pacific Railway Company," and has ever since owned said line.

(3) He admits that defendant Union Pacific Railroad Company owns a line of railroad extending from Denver to Cheyenne, Wyoming, which it acquired at a sale under foreclosure decrees in 1898, and has ever since owned said line; and that said defendant Union Pacific Railroad Company also owns a line of railroad from Julesburg to La Salle, Colorado, which it acquired by purchase from the owners thereof in 1899, and which it has ever since owned.

(4) He admits the consolidation of "The Union Pacific Railroad Company," incorporated under the act of Congress approved July 1, 1862, the "Kansas Pacific Railway Company," and the "Denver Pacific Railway and Telegraph Company" into and under the name, style, and title of "The Union Pacific Railway Company," and avers that such consolidation occurred on or about January 24, 1880.

(5) He admits that the Central Pacific Railroad Company of California was organized under the laws of the State of California, and he admits that the Western Pacific Railroad Company was also organized under the laws of said State. He admits that the  
890 said Central Pacific Railroad Company of California and the said Western Pacific Railroad Company were consolidated into and under the name, style, and title of "Central Pacific Railroad Company." He admits that said Western Pacific Railroad Company constructed a line of railroad from San Francisco to Sacramento, California, and that said Central Pacific Railroad Company commenced the construction, and after the consolidation aforesaid the company formed by such consolidation completed the said railroad from Sacramento to Ogden, Utah, where it connects with the main line of the Union Pacific Railroad Company.

(6) He refers to the said acts of Congress approved July 1, 1862 (12 Stat., 489), July 2, 1864 (13 Stat., 356), and June 20, 1874 (18 Stat., 111), for answer to the allegations of the petitions respecting the aid granted in bonds and land to, and the duties and responsibilities imposed by said acts upon, the corporations aided and authorized by said acts to construct the railroads therein mentioned and provided for and to the several acts and joint resolutions of Congress amendatory of and supplementary to the aforesaid acts. (13 Stat., 356; 12 Stat., 538; 13 Stat., 504; 13 Stat., 573; 14 Stat., 355; 14 Stat.,

356; 14 Stat., 79; 14 Stat., 292; 15 Stat., 39; 15 Stat., 79; 15  
891 Stat., 324; 15 Stat., 348; 16 Stat., 56; 16 Stat., 121; 16 Stat.,  
430; 17 Stat., 508; 18 Stat., 111; 18 Stat., 200; 18 Stat., 453;  
20 Stat., 56; 20 Stat., 169; 24 Stat., 488; 25 Stat., 382; 25 Stat., 439.)

(7) He admits that since 1897 the Oregon Short Line Railroad Company, and since 1896 the Oregon Railroad and Navigation Company each has owned lines of railroad as alleged in Subdivision III of the petition.

(8) He admits that defendants Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company each owns and operates important branch lines of railroad.

(9) He admits that prior to January 1, 1901, the Union Pacific Railroad Company acquired and has ever since owned and still owns substantially all the capital stock of defendant Oregon Short Line Railroad Company, and that prior to said date the Oregon Short Line Railroad Company acquired and has ever since owned and still owns substantially all the capital stock of defendant the Oregon Railroad and Navigation Company.

(10) He admits that by means of such stock ownership the Union Pacific Railroad Company has since its acquisition been able  
892 to elect, by voting upon such stock through its proxies, the directors of said Oregon Short Line Railroad Company, and that the latter, by voting upon said stock through its proxies, has elected the directors of the Oregon Railroad and Navigation Company, but he avers that the railroads and other property of the Oregon Short Line Railroad Company have at all times been controlled, managed, and operated by said Oregon Short Line Railroad Company, in its own name and by its own officers and agents; and that the railroads and other property of the Oregon Railroad and Navigation Company have at all times been controlled, managed, and operated by the Oregon Railroad and Navigation Company in its own name and by its own officers and agents.

(11) He admits that prior to and at all times since the 1st day of January, 1901, the lines of railroad owned by defendant Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company, respectively, have been operated as one system, and that said lines, extending from Council Bluffs, Iowa, and Kansas City, Missouri, to Ogden, and Salt Lake City, Utah, Butte, Montana, and Portland, Oregon, have composed and still compose continuous through lines, operated harmoniously and, so far as affecting the shipping and traveling  
893 public, practically as if owned and operated by a single company.

(12) He admits that in the year 1901 the Oregon Railroad and Navigation Company owned three steamships averaging about 1,350 net tons each, plying between Portland and San Francisco, by way of the Willamette and Columbia Rivers and the Pacific Ocean; and he avers that in the year 1904, the San Francisco and Portland Steamship Company, a corporation of the State of California, was organized, that all of its stock was acquired by the Oregon Railroad and Navigation Company and two of said steamships were transferred by charter to said San Francisco and Portland Steamship Company, and said San Francisco and Portland Steamship Company has since operated and now regularly operates two steamships, one of 2,317 tons and one of 1,836 tons, between San Francisco and Portland, via the Pacific Ocean and the Willamette and Columbia Rivers.

(13) He denies that the Oregon Railroad and Navigation Company ever operated a line of steamships or any steamships between Portland, Oregon, and Japan and China or other Asiatic ports.

(14) He admits that on or about the 14th day of January, 1901, the Portland and Asiatic Steamship Company was incorporated under the laws of the State of Oregon with a capital of \$100,000, and that all of its capital stock was acquired and has ever since been and still is owned by said the Oregon Railroad and Navigation Company; and he admits that said Portland and Asiatic Steamship Company has sometimes operated steamships between Portland, Oregon, and Asiatic ports under charter; but he denies that said steamship company has ever owned or now owns any steamships or has ever operated or now operates any regular line of steamships.

(15) He denies that it has been or ever was practicable for the said steamships operated by the Portland and Asiatic Steamship Company to compete to any considerable or substantial extent with lines of steamships operated between San Francisco and Asiatic ports and Puget Sound and Asiatic ports for traffic originating in the interior of the United States or on the Atlantic seaboard.

(16) He admits that the Southern Pacific Company was, on January 1, 1901, and still is, the owner of a large majority of the capital stock of corporations which separately own and operate connecting links of a line of railroad extending from New Orleans, in the State of Louisiana, and Galveston, in the State of Texas, and through the States of Louisiana and Texas and the Territories of New Mexico and Arizona and the States of California and Oregon to Los Angeles and San Francisco and other points in California, and to Portland, Oregon.

(17) He admits that said Southern Pacific Company, in 1901, owned and operated and has ever since owned and operated and now owns and operates lines of steamships between New York and New Orleans and New York and Galveston and between New Orleans and Havana which connect at New Orleans and Galveston with said rail lines.

(18) He admits that on the 1st day of January, 1901, the Southern Pacific Company owned, has ever since owned, and now owns all the capital stock of the Central Pacific Railway Company, which he avers is a corporation organized and existing under the laws of the State of Utah, and which acquired and now owns and operates all the railroads and other property formerly owned and operated by the Central Pacific Railroad Company of California and the Western Pacific Railroad Company, the corporations referred to in the afore-said acts of Congress and by the California corporation into which they were merged by consolidation; and he also avers that said Southern Pacific Company on and prior to the 1st day of January, 1901, and ever since that date has held, possessed, and operated  
896 and still holds, possesses, and operates the railroads of said Central Pacific Railway Company, with their appurtenances, under and by virtue of instruments of lease theretofore made and entered into.

(19) He admits that on January 1, 1901, said Southern Pacific Company owned, has ever since owned, and still owns 100,500 shares, out of a total of 200,000 shares, of the capital stock of the Pacific Mail Steamship Company, and that said Pacific Mail Steamship Company during all said period has operated a line of steamships between San Francisco, the Hawaiian Islands, the Philippine Islands, and Chinese and Japanese ports; and also a line of steamships between San Francisco and Panama; but he denies that the said line of steamships, with the railroad of the Panama Railroad Company and steamships operating on the Atlantic Ocean, form a through line between New York and San Francisco via the Isthmus of Panama.

(20) He denies that the said rail lines from the Mississippi River to Portland, Oregon, by way of Los Angeles and San Francisco, were at any time in competition with the said lines of the Union Pacific Railroad Company for the transportation of freight  
897 between points in the Mississippi Valley and in the Eastern States or elsewhere and the Pacific Coast and points in Colorado and other interior States.

(21) He denies that the steamship lines of the Southern Pacific Company between New York and New Orleans and New York and Galveston, together with the rail lines in connection therewith, were

in active competition with the lines of the Union Pacific Railroad Company for a large amount of traffic originating on the Atlantic coast and in the Central States.

(22) He avers, on the contrary, that in the transcontinental lines of railroad reaching the Pacific coast south of Portland, Oregon, the Union Pacific Railroad was but a link about 1,000 miles in length, and the Union Pacific Railroad Company merely an intermediate carrier without any power to make rates upon such traffic, and that the defendant Southern Pacific Company, through its possession and operation of the Central Pacific Railroad and its ownership of all of the stock of the Central Pacific Railway Company, controlled that portion of such transcontinental line extending from Ogden, Utah, to the Pacific Ocean at San Francisco and other points in California, and no rate between the Missouri River or points east

thereof and the Pacific coast south of Portland or Asiatic  
898 ports could be made by the Union Pacific Railroad Company except with the consent of and by agreement with said Southern Pacific Company; and while the said Union Pacific Railroad Company and its constituent companies, to wit, The Oregon Short Line Railroad Company and The Oregon Railroad and Navigation Company, separately owned connecting lines of railroad operated as a single system as aforesaid, extending from the Missouri River to Portland, Oregon, and operated certain small steamships between Portland and San Francisco, as hereinbefore alleged, yet he avers that such route via Portland was not only an impracticable route as a competitor of said Southern Pacific Company, but any attempt of said Union Pacific Railroad Company to use it as such competitor would have greatly injured the said Union Pacific Railroad Company, because said Southern Pacific Company would thereupon have preferred the rivals of said Union Pacific Railroad Company in routing and interchanging traffic at Ogden, and the business in tonnage and revenue which the said Union Pacific Railroad Company would thereby have lost would have greatly exceeded the total volume of business it could have secured over such impracticable route in competition with said Southern Pacific Company; so that the  
899 interest of said Union Pacific Railroad Company and the companies formerly owning its lines always prevented it and them from using or attempting to use the said route via Portland in competition with said Southern Pacific Company upon any business to or from the Pacific coast south of Portland or to or from Asiatic ports.

(23) He denies that the rail line of said Southern Pacific Company between San Francisco and Portland was in active competition with the ships of the Oregon Railroad and Navigation Company

plying between San Francisco and Portland, and avers that competition between said lines was never practicable.

(24) He denies that ships operated by the Portland and Asiatic Steamship Company between Portland, Oregon, and Asiatic ports, in connection with the rail lines of the Union Pacific Railroad Company, or otherwise, were ever in competition with the Pacific Mail Steamship Company.

(25) He denies that the line of railroad composed of the tracks of the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation Company between Ogden, Utah, and Portland, Oregon, were ever in competition with the lines of said Southern Pacific Company between said points or that such competition was ever practicable.

900 (26) He denies that any competition between the system of railroads and steamships owned and controlled by the Union Pacific Railroad Company and the system of railroads and steamships owned and controlled by the Southern Pacific Company, if any such competition ever existed, was substantial or that it included a large volume of traffic of any kind.

(27) He admits that the Atchison, Topeka and Santa Fe Railway Company has been for a period of more than eight years the owner and in control of lines of railroad as alleged in subdivision III of the petition, and admits that the lines of the Union Pacific Railroad Company, in connection with the lines of the Central Pacific Railway Company, operated by the said Southern Pacific Company, have been during such period and still are competitors of the Atchison, Topeka and Santa Fe Railway Company for a large volume of traffic to and from the Pacific coast.

(28) He admits that the lines of the Atchison, Topeka and Santa Fe Railway Company, since the completion of the same to San Francisco, California, about the year 1900, constituted the only line of transportation by rail from the Pacific coast, south of Portland, Oregon, to the Mississippi Valley and the East, except the lines  
901 of the Southern Pacific Company to the Gulf of Mexico and the lines of the Central Pacific Railway Company operated by the Southern Pacific Company, in connection with the Union Pacific Railroad, until the completion of the San Pedro, Los Angeles and Salt Lake Railroad in the year 1905.

(29) He has no knowledge respecting the operation by the Atchison, Topeka and Santa Fe Railway Company of a line of steamships between San Diego, California, and Asiatic ports; but he denies that the traffic handled by any such steamship line, if any such line was ever operated, competitive between said Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company and the

Union Pacific Railroad Company, was of great volume and embraced both passengers and freight.

(30) He admits that the Northern Pacific Railway Company, the Great Northern Railway Company, and the Chicago, Burlington and Quincy Railroad Company each owns and operates lines of railroad substantially as alleged in said petition; but he denies that the lines of said Northern Pacific Railway Company in and of themselves are competitive with the lines of the Union Pacific Railroad Company; and he admits that the lines of the Chicago, Burlington and Quincy Railroad Company are competitive with the lines owned and operated by the Union Pacific Railroad Company to a limited extent and between certain points.

(31) He denies that the traffic between the Pacific coast, Asiatic ports, and points on and east of the Missouri and Mississippi Rivers is competitive between the lines of the Union Pacific Railroad Company and connections owned by it and the lines of said Northern Pacific Railway Company and Great Northern Railway Company and connections and steamship lines controlled by them.

(32) He admits that the defendant, The San Pedro, Los Angeles and Salt Lake Railroad Company is the owner of a line of railroad extending from San Pedro, on the Pacific Ocean, in the State of California, by way of Los Angeles, through the States of California and Nevada and into Utah, to Salt Lake City, and that most of said line is directly owned by said corporation, and the remainder of it is operated under lease or trackage contracts, and that the same constitutes a continuous line between San Pedro and Salt Lake City, Utah; and he denies that by said contract or otherwise there ever was any suppression or restriction of competition by said line with the lines of any defendant herein.

903 (33) He admits that the Denver and Rio Grande Railway Company owns a line of railroad from Salt Lake City, Utah, to Denver, Colorado, and that it is a competitor of defendant Union Pacific Railroad Company, but not of defendant Southern Pacific Company.

IV. (1) He denies that in the spring of 1901 or at any other time he and the defendants Schiff, Kahn, Stillman, and Union Pacific Railroad Company, or any of them, conspired to restrain trade and commerce among the several States and foreign countries carried on by said Union Pacific Railroad Company and said Southern Pacific Company or any other company, or to monopolize or attempt to monopolize any such trade and commerce, or to restrain or prevent competition among said railway systems or any other railway systems and said steamship lines or any other steamship lines in respect to any such commerce, or to deprive the public of the



facilities and advantages in the carrying on of such trade and commerce through the independent competition, if any there was, of said railway systems and steamship lines or other railway systems or steamship lines; or that he and the said defendants or any  
904 of them ever entered into a combination or conspiracy to effect a virtual or substantial consolidation of said Union Pacific Railroad Company and any other transcontinental railway companies or steamship companies, or to place restraint upon any competitive commerce, if any such there was, carried on by such companies, or to monopolize or attempt to monopolize the same, or to suppress any competition existing between any of said companies or lines by the means alleged in the petition or otherwise.

(2) He admits that on or about the 20th day of February, 1901, defendant Union Pacific Railroad Company acquired by purchase from said firm of Kuhn, Loeb & Co. 750,000 shares of the capital stock of said Southern Pacific Company of the aggregate par value of \$75,000,000 out of 1,978,399 shares of the aggregate par value of \$197,839,900 then issued and outstanding, but he denies that the said stock was purchased or acquired in pursuance of any conspiracy or combination or for any of the purposes alleged in said petition.

(3) He admits that thereafter, to wit, on or about the 26th day of February, 1902, defendant Union Pacific Railroad Company sold and delivered the said 750,000 shares of the stock of said Southern Pacific Company to defendant Oregon Short Line Railroad  
905 Company, which has ever since owned and still owns the same.

(4) He admits that thereafter, to wit, on or about the 31st day of May, 1902, defendant Oregon Short Line Railroad Company acquired by purchase from said Kuhn, Loeb & Co. 150,000 additional shares of stock of said Southern Pacific Company, which said Oregon Short Line Railroad Company has ever since owned and still owns; but he denies that the said additional shares were purchased or acquired in pursuance of any conspiracy or combination or for any of the purposes alleged in the petition.

(5) He admits that thereafter, when in 1904 defendant Southern Pacific Company created an issue of preferred stock which it offered to its stockholders for subscription pro rata at par, said Oregon Short Line Railroad Company as the owner of 900,000 shares of the common stock of said Southern Pacific Company exercised its right and subscribed for and received and has ever since owned and still owns 180,000 shares of the preferred stock of said Southern Pacific Company; and that thereafter, in 1907, when said Southern Pacific Company increased its said preferred stock by an additional  
906 issue thereof which it offered to the holders of its outstanding stock for subscription pro rata at par, said Oregon Short Line

Railroad Company as the owner of 1,080,000 shares of the stock of said Southern Pacific Company exercised its right and subscribed for and received 162,000 additional shares of the preferred stock of said Southern Pacific Company, and it has ever since owned and still owns the same, so that said Oregon Short Line Railroad Company now owns 900,000 shares of common stock and 342,000 shares of preferred stock, making a total of 1,242,000 shares of the capital stock of said Southern Pacific Company out of a total of 2,726,498 shares issued and outstanding.

(6) He denies that the stock of the Southern Pacific Company so acquired and owned by defendant Oregon Short Line Railroad Company is voted at the dictation and instance of the defendants Harriman, Stillman, Schiff, and Kahn, and that the directors of said company have been selected by the said Harriman, Stillman, Schiff, and Kahn.

(7) He denies that the Union Pacific Railroad Company or the Oregon Short Line Railroad Company controls or has ever controlled the management, operation, or business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as may result from the voting upon the stock of  
907 said Southern Pacific Company owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern Pacific Company.

(8) He denies that the said preferred stock was issued by said Southern Pacific Company, or that any of the common stock of said company was acquired by said Oregon Short Line Railroad Company, or the Union Pacific Railroad Company, in pursuance of any combination or conspiracy or for any of the purposes or with the intent alleged in said petition.

(9) He admits that at the annual meetings of the stockholders of the Southern Pacific Company since the stock was so acquired and owned by said Oregon Short Line Railroad Company such stock has constituted a majority of the shares represented at such meetings; and he admits that by voting upon the said shares, through its duly authorized agents and proxies, aided by the votes upon other shares owned by various other stockholders of said Southern Pacific Company, the defendant Oregon Short Line Railroad Company has been able to elect the directors of said Southern Pacific Company; but he avers that at no such meeting have any votes ever been cast by any stockholder against the persons so elected.

(10) He admits that since April 3, 1901, a majority of  
908 the persons who have been directors of said Southern Pacific Company were at the same time directors of said Union Pacific Railroad Company.

(11) He admits that the stock of said Southern Pacific Company not owned by defendant Oregon Short Line Railroad Company is owned by a large number of individuals, firms, and corporations residing in many different places; but he denies that said stockholders are or will be unable to elect the directors of said Southern Pacific Company, if they should deem it to their interest to do so, in opposition to those voted for by said Oregon Short Line Railroad Company; and he avers that the reason why said stockholders have not heretofore elected the directors of said company is that they have been satisfied with the directors nominated and elected by the agents and proxies of said Oregon Short Line Railroad Company in conjunction with the agents and proxies of other stockholders.

(12) He admits that on the 3d day of April, 1901, he became chairman of the executive committee, and on the 26th day of September, 1901, he became the president of said Southern Pacific Company, and ever since has been and still is such chairman and president.

909 (13) He admits that the same person is the chief traffic officer, the same person the chief operating officer, and the same person the chief accounting officer of both companies, and that said companies have jointly employed numerous commercial and other agents; but he avers that a very large majority of the agents, officers, and employees of said companies are separate.

(14) He admits that since about the 26th day of October, 1904, the Pacific Mail Steamship Company, the Portland and Asiatic Steamship Company, and the San Francisco and Portland Steamship Company have had the same officers and agents, but denies that there ever was any competition between any of said steamship companies or said railroad or steamship lines.

(15) He denies each and every allegation of Subdivision IV of the petition, respecting the said Schiff, Kahn, Stillman, Union Pacific Railroad Company, and this defendant, and any conspiracy or combination among them for any of the purposes or with any of the intents alleged; and he denies each and every allegation of said Subdivision IV of said petition not herein expressly admitted.

V. (1) He denies that he and the said Schiff, Kahn, Still-  
910 man, Union Pacific Railroad, or any of them, in the spring of 1901, or at any other time, caused the Union Pacific Railroad Company to acquire a majority of the stock of the Northern Pacific Railway Company pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign nations, or to monopolize or attempt to monopolize such trade and commerce, or to suppress any competition; and he denies all the allegations of Subdivision V of the petition respecting any conspiracy or combination

for that or any other purpose between any of the defendants to this suit.

(2) He admits that in the year 1901 said Oregon Short Line Railroad Company purchased \$37,023,000 par value of the common stock and \$41,085,000 par value of the preferred stock of the Northern Pacific Railway Company, and that at the time of such purchase the total stock of the Northern Pacific Railway Company issued and outstanding was of the aggregate par value of \$155,000,000; but he denies that such purchase was in pursuance of any conspiracy or combination or for any of the purposes alleged in the petition.

(3) He admits the incorporation of the Northern Securities Company, and also the retirement of the preferred stock by an additional issue of common stock of the Northern Pacific Railway Company, as alleged in said petition.

(4) He admits the sale and transfer of said stock to the Northern Securities Company, and the receipt by said Oregon Short Line Railroad Company of \$82,491,841 par value of the stock of said Northern Securities Company represented by certificates issued in his name, and in the name of Winslow S. Pierce, who was at that time general counsel of defendant Union Pacific Railroad Company; and he admits that neither he nor the said Pierce had any personal interest in said shares.

(5) He admits the commencement of a suit by the United States of America against said Northern Securities Company and others, and the decision of said suit as alleged in the petition.

(6) He admits the commencement thereafter of a suit by him and by said Oregon Short Line Railroad Company, Winslow S. Pierce, and the Equitable Trust Company of New York, as alleged in the petition; and he admits that the relief sought by the complainants in said suit was denied by the decrees entered therein. But he avers that the said courts by said decrees approved the distribution by the

Northern Securities Company of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company complained of by defendant Oregon Short Line Railroad Company and its codefendants in said suit; and that as a result of said distribution and of the approval of the same in said suit, the defendant Oregon Short Line Railroad Company during the year 1904 received from the Northern Securities Company, as the interest and share of said Oregon Short Line Railroad Company of the assets so distributed, 281,828 shares, being 18.18 per cent of the capital stock of the Northern Pacific Railway Company, and 216,520 shares, being 17.32 per cent of the capital stock of the Great Northern Railway Company; and that no doubt as to the right of said Oregon Short Line Railroad Company to so receive and hold the said shares was intimated by any of the courts in such suit.

(7) He avers that defendant Oregon Short Line Railroad Company upon the final decision of said suit proceeded from time to time to sell the stock of the Northern Pacific Railway Company and of the Great Northern Railway Company, so received by it, as sales could be advantageously effected; and that by such sales the amount of such stock so held has been steadily reduced, so that at the date of the commencement of this suit the said Oregon Short Line  
913 Railroad Company had sold all but 1,128 shares of the aggregate par value of \$112,800 of the stock of the Northern Pacific Railway Company, and all but 4,041 shares of the aggregate par value of \$404,100 of the stock of the Great Northern Railway Company which it had received from such distribution of the assets of said Northern Securities Company; and said Oregon Short Line Railroad Company, at the date of the commencement of this suit, also owned 32,516 partially paid shares of the Northern Pacific Railway Company and 38,745 partially paid shares of the Great Northern Railway Company, for which it had subscribed upon increases of the stock of said companies since said distribution was made.

(8) He denies that he and the said Schiff, Kahn, Stillman, and Union Pacific Railroad Company, or any other persons associated with them, caused the said suit of Oregon Short Line Railroad Company, Winslow S. Pierce, the Equitable Trust Company of New York, and this defendant against Northern Securities Company to be prosecuted for the purpose of effectuating any conspiracy to restrain trade and commerce or to smother competition or monopolize any trade as in said petition alleged.

(9) He denies each and every allegation of said Sub-  
914 division V not herein expressly admitted.

VI. (1) He admits that prior to the year 1902 defendant William A. Clark, together with others, caused to be incorporated the defendant the San Pedro, Los Angeles and Salt Lake Railroad Company, but denies that it was for the purposes alleged in the petition, and refers to the articles of incorporation of the company last named for the purposes of its incorporation.

(2) He admits that on or about the 9th day of July, 1902, he entered into and executed with defendant William A. Clark an agreement in writing and that "Exhibit A" to the petition is a true copy of such agreement; but denies that said agreement was entered into for any of the purposes alleged in subdivision VI of the petition, or for any purpose not set forth or mentioned in said "Exhibit A"; and he avers that in entering into and executing said contract he was acting for defendant Oregon Short Line Railroad Company and for no other corporation or person.

(3) He admits that pursuant to the said contract, "Exhibit A," other contracts between him and the said Clark and between  
915 the Oregon Short Line Railroad Company and the San Pedro, Los Angeles and Salt Lake Railroad Company were made and entered into in June and July, 1903, but denies that any of such other contracts were of the character or for any of the purposes alleged in said subdivision VI of the petition.

(4) He admits that on or about the 7th day of June, 1903, a contract in writing bearing that date was made and entered into between him, as trustee for the defendant Oregon Short Line Railroad Company, and William A. Clark, individually and as trustee for his associates, and defendant The Farmers' Loan and Trust Company, of which "Exhibit B" annexed to the petition is a true copy, and that the stock of the defendant The San Pedro, Los Angeles and Salt Lake Railroad Company was deposited with and is still held by the Farmers' Loan and Trust Company, defendant, as stipulated and provided in and by said contract "Exhibit B."

(5) He denies each and every allegation of a conspiracy or combination by and between himself and the defendants Schiff, Kahn, Stillman, Clark, Union Pacific Railroad Company, and Oregon Short Line Railroad Company, or any of them, for any of the objects or purposes mentioned in Subdivision VI of the petition, or  
916 for any other purpose; and he denies each and every allegation in Subdivision VI of the petition not herein in this subdivision expressly admitted; and he avers the facts to be as follows, viz:

(a) As early as 1888 the Oregon Short Line and Utah Northern Railway Company, the corporation which formerly owned the lines of railroad now owned by defendant Oregon Short Line Railroad Company, resolved to construct a line of railroad from Salt Lake City, Utah, to Los Angeles, California, with various branches; and in 1890 it had constructed and put into operation the said line from Salt Lake City, via Sandy, Provo, Juab, and Leamington, to Milford, a distance of 221.9 miles, and various branches, all of which are more particularly described as "Parcel I" and "Parcel II" of article second in the contract "Exhibit A" to the petition herein. It had complied with all the laws of the Territory of Utah and the State of Nevada, necessary to entitle it to construct said line and had surveyed and located the said line and under due corporate action had prepared and filed maps and profiles of the same in the proper land offices in Utah and Nevada to entitle it to, and it had acquired the right of way for, said line across the lands of the United States in a general southwesterly direction from Milford  
917 through Utah and across the State of Nevada to the boundary line between the States of Nevada and California. The

said maps had been approved under the rules of the Department of the Interior, and the Oregon Short Line and Utah Northern Railway Company had graded and completed the roadbed of said line ready for the rails from Milford to the boundary line between Utah and Nevada; and had practically completed the grading of said line from said boundary line southwesterly to Calientes, Nevada, a distance of 339 miles from Salt Lake City; and had completed the grading of a branch of said line from Calientes to Pioche, Nevada.

(b) On account of its inability at that time to procure the money necessary to complete the said line, said The Oregon Short Line and Utah Northern Railway Company discontinued and suspended the work of constructing said line in 1891. The company last named continued in such financial difficulty that on or about the 13th day of October, 1893, all of its railroad and other assets were placed in the hands of receivers, who administered the same until the sale thereof under decrees of the circuit courts of the United States for the districts of Utah and Idaho, on or about the 9th day of January, 1897, when they were bought by or for defendant Oregon Short Line Railroad Company.

(c) The defendant Oregon Short Line Railroad Company after its acquisition of the railroads and other assets of the Oregon Short Line and Utah Northern Railway Company, upon the foreclosure sale thereof as aforesaid, was until 1901 financially unable actively to resume the construction of said line from Milford to Los Angeles; and in its endeavor to provide for the completion of said line of railroad it conveyed that portion of said line, including the completed grade from Milford to the boundary line between the States of Utah and Nevada, to the Utah and Pacific Railroad Company, a corporation of the State of Utah, all the capital stock of which was owned by defendant Oregon Short Line Railroad Company, and conveyed that portion of said line from the boundary line between Utah and Nevada to the boundary line between Nevada and California, including the partially constructed grade of the main line from the Utah boundary line to Calientes, and of the branch line from Calientes to Pioche, to the Utah, Nevada and California Railroad Company, a corporation of the State of Nevada, all of the capital stock of which was owned by defendant Oregon Short Line Railroad Company; and to construct, complete, and own that portion of said line that was to be situated in the State of California, the defendant Oregon Short Line Railroad Company caused to be incorporated and acquired all the capital stock of the Utah, Nevada & California Railroad Company in California.

(d) Early in 1901 said Utah & Pacific Railroad Company and said Utah, Nevada & California Railroad Company, aided and assisted

by defendant Oregon Short Line Railroad Company, actively resumed the construction of the said line of railroad from Milford to Los Angeles, and to that end put a large force of men at work laying track upon and repairing where necessary the grades which had been constructed as aforesaid from Milford to Calientes, and in doing other work necessary in the construction of the said line to Los Angeles.

(e) On or about the date when the construction of said line was resumed in 1901, as aforesaid, defendant The San Pedro, Los Angeles and Salt Lake Railroad Company was incorporated under the laws of the State of Utah with power to build or acquire railroads in that State, but it did not acquire under the laws of Nevada the right to build or acquire railroads in that State or acquire the right under the laws of California to build or acquire any railroad north-

920 or east of Riverside until long after that date. It had acquired a line of railroad of inferior character extending from San Pedro to Los Angeles, a distance of twenty-four miles, and branches from Los Angeles to Pasadena and Glendale, a distance of about twenty miles, which were the only railroads owned or controlled by said The San Pedro, Los Angeles and Salt Lake Railroad Company when the construction of the said line from Milford to Los Angeles was resumed by defendant Oregon Short Line Railroad Company and the companies controlled by it as aforesaid. Said The San Pedro, Los Angeles and Salt Lake Railroad Company at that time controlled, through the ownership of stock or otherwise, the Utah and California Railway Company, a corporation of the State of Utah, authorized to build a railroad in the State of Utah, but not in the States of Nevada or California.

(f) Said The San Pedro, Los Angeles and Salt Lake Railroad Company had not at said time located any line of railroad or acquired any rights of way or done any work of constructing a railroad easterly or northerly of Riverside, California, a distance of sixty miles from Los Angeles, and said Utah and California Railway Company had not at said time located any line of railroad or acquired any rights of way or done any work of constructing a railway.

921 (g) Soon after the incorporation of said The San Pedro, Los Angeles and Salt Lake Railroad Company, it attempted to seize and appropriate to its own use the right of way across the State of Nevada and the partially completed grade between Calientes and the Utah boundary line, and between Calientes and Pioche, and, to that end, located and constructed by the Utah Northern and Oregon Short Line Railway Company, as hereinbefore alleged, and then owned by the Utah, Nevada and California Railroad Company, and,



to that end, said The San Pedro, Los Angeles and Salt Lake Railroad Company caused the said line to be surveyed, and prepared maps and profiles adopting the same as its own, and attempted to file the same in the local land office of the United States in Nevada for the purpose of securing the right of way, and also acquired a pretended tax title thereto from Lincoln County, Nevada, and also attempted by its laborers and other employees to take forcible possession of the same.

(h) Thereupon and in order to protect its possession of and title to said grade and right of way across the State of Nevada, said Utah, Nevada and California Railroad Company commenced in the circuit court of the United States for the district of Nevada a suit  
922 against said The San Pedro, Los Angeles and Salt Lake Railroad Company and said Utah and California Railroad Company and others, and, upon the hearing of said cause, an injunction was issued restraining and enjoining the said defendants from interfering with the possession and rights of said complainant, and said Utah, Nevada and California Railroad Company in a suit against said The San Pedro, Los Angeles and Salt Lake Railroad Company and others in Lincoln County, Nevada, procured a decree canceling and setting aside the said pretended tax titles of the defendant The San Pedro, Los Angeles and Salt Lake Railroad Company; and the contests in the land offices of the United States between said Utah, Nevada and California Railroad Company and said Utah and California Railway Company involving the said right of way was finally decided by the Secretary of the Interior in favor of the said Utah, Nevada and California Railroad Company.

(i) As a result of such decision rendered prior to the execution of "Exhibit A" to the petition herein on July 9, 1902, the defendant Oregon Short Line Railroad Company and the said Utah and Pacific Railroad Company and said Utah, Nevada and California Railroad Company, controlled by it through the ownership of stock,  
923 established their right to the partially completed railroad and the located line and right of way therefor from Salt Lake City, Utah, to the boundary line between the States of Nevada and California, and were rapidly proceeding with the completion of said line to Los Angeles; while the said San Pedro, Los Angeles and Salt Lake Railroad Company had in operation only the aforesaid line from San Pedro to Los Angeles and branches from Los Angeles to Pasadena and Glendale, and had partially constructed an extension eastwardly for a distance of about sixty miles.

(j) And this defendant is informed and believes, and upon such information and belief avers, that defendant The San Pedro, Los Angeles and Salt Lake Railroad Company would never have under-

taken the construction of a line of railroad from Los Angeles to Salt Lake City except for its expectation and belief, and the expectation and belief of the defendant Clark, that it could acquire, without compensation, the right of way and partially constructed line located and constructed as aforesaid by the Oregon Short Line and Utah Northern Railway Company from Milford through Utah and across the State of Nevada to the California boundary line; and that defendant Oregon Short Line Railroad Company would not extend the said line by construction from Milford to Los Angeles; and 924 that when it appeared from the contests, suits, and decisions aforesaid that the said right of way and partially completed grade could not thus be acquired, and that said Oregon Short Line Railroad Company would construct and extend its own line from Milford, Utah, to Los Angeles, California, said The San Pedro, Los Angeles and Salt Lake Railroad Company and the said Clark would have abandoned the previously conceived purposes and intention to construct and establish a line of railroad from Los Angeles, California, to Salt Lake City, Utah, but for their ability to negotiate and execute the contract, "Exhibit A" to the petition herein, providing for the construction and establishment of such a line under the terms and conditions in said contract set forth.

(6) He denies that the said "Exhibit A" to the petition, or that anything done in executing and carrying out the same, has suppressed, restrained, or in any manner restricted any commerce among the several States or with foreign countries.

(7) He denies that the aforesaid act of Congress approved July 2, 1890, or any other law of the United States, was intended to or could constitutionally prohibit the making or carrying out of such agreement and contract, and avers that the construction of rail- 925 roads in the States of Utah, Nevada, and California by the corporations of said States, respectively, or by corporations of other States authorized by the said States to exercise their corporate powers therein, and all agreements relating to the construction or abandonment of the construction of such railroads, are matters wholly to be dealt with by the laws of the States, respectively, and any law of Congress intended or construed to prohibit or regulate or in any manner interfere with such contracts, corporate powers, and matters is in excess of the powers of Congress under the Constitution of the United States and is therefore void.

He avers that although prosecuted diligently after the making of said contract, "Exhibit A" to the petition, the work of constructing the said railroad from Milford to Los Angeles was not completed and the said line opened for business until the first day of May, 1905; and the defendants avers that on the 9th day of July, 1902, when

the said agreement was made and entered into, there was not then, and, from the nature of the work to be done, there could not for several years be, any competition of any sort between the parties to the said agreement in transportation, to be suppressed or in any way restrained; and the possibility or probability of any such  
926 competition and of any restraint or restriction thereon was too remote and contingent to be prohibited by or to come within the provisions of the said act of Congress, approved July 2, 1890.

VII. (1) He denies that, pursuant to any conspiracy to restrain trade and commerce among the several States or with foreign nations, or to monopolize or attempt to monopolize any such trade and commerce, or to restrain or prevent competition among any of said railway systems, he and the defendants, Schiff, Kahn, Stillman, Rogers, and Frick, or any of them, in the year 1904, or at any other time, made large purchases of stock of the Atchison, Topeka and Santa Fe Railway Company, aggregating \$30,000,000 par value of said stock or any other amount; and he denies that he or any of the other defendants at any time demanded of any officials of the said The Atchison, Topeka and Santa Fe Railway Company that any of the defendants herein should be elected directors of the Atchison, Topeka and Santa Fe Railway Company.

(2) He admits that in the year 1904 the defendants, Frick and Rogers, were elected directors of the Atchison, Topeka and  
927 Santa Fe Railway Company, and have since served and are still serving as such directors; but he denies that they were so elected for any of the reasons alleged in Subdivision VII of the petition herein, and denies that by means of such election the defendant Union Pacific Railroad Company has had knowledge of the affairs and business of said The Atchison, Topeka and Santa Fe Railway Company.

(3) He admits that in July, 1906, defendant Oregon Short Line Railroad Company purchased, and has ever since owned, \$10,000,000 par value of the capital stock of said The Atchison, Topeka and Santa Fe Railway Company out of a total issue of preferred and common stock of said company outstanding of the aggregate par value of \$216,199,530, but he denies that such purchase was for any of the purposes alleged in said petition.

(4) He denies that he or any associates of his or defendant Union Pacific Railroad Company, or all of them, have any control, partial or otherwise, of said The Atchison, Topeka and Santa Fe Railway Company.

(5) He denies that competition between the systems of railway controlled by defendant Union Pacific Railroad Company and by

said The Atchison, Topeka and Santa Fe Railway Company has to any extent been eliminated.

928 (6) He denies that he or any other persons alleged in said petition to be "conspirators" have caused defendant Southern Pacific Company or the Atchison, Topeka and Santa Fe Railway Company to abandon any extensions, improvements, and additions to their lines in California or elsewhere.

(7) He admits that certain lines of railroad surveyed and partially constructed within the State of California formerly owned by corporations whose stock was owned by the Southern Pacific Company, and that certain other lines of railroad surveyed and partially constructed within the State of California formerly owned by corporations whose capital stock was owned by the Atchison, Topeka and Santa Fe Railway Company were conveyed to a company incorporated under the laws of the State of California under the name, style, and title of "Northwestern Pacific Railway Company," and that one-half of the capital stock of the last-named corporation is owned by the Southern Pacific Company and the other half by the Atchison, Topeka and Santa Fe Railway Company; but he avers that all of the corporations which owned and conveyed said lines, and the said Northwestern Pacific Railroad Company itself, were incorporated under the laws of the State of California, and that all  
929 such sales and consolidations were made and effected under and by authority of the laws of said State.

(8) He denies that the lines of railroad of the Atchison, Topeka and Santa Fe Railway Company are operated in harmony with the lines of said Union Pacific Railroad Company or said Southern Pacific Company under agreements and understandings as to rates and divisions of business and that competition between such lines has been eliminated or in any wise restricted.

(9) He denies that any of the acts or transactions alleged in said petition were committed or occurred in pursuance of any conspiracy, combination, or contract to restrain trade or commerce among the several States and with foreign countries; or in pursuance of any conspiracy or combination for any purpose.

VIII. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied,  
930 the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall

direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD H. HARRIMAN,  
*Defendant.*

By P. L. WILLIAMS,  
*His solicitor.*

ROBERT S. LOVETT, *of counsel.*

931 No. 993. United States Circuit Court, District of Utah. In equity.

The United States of America, complainant,  
*v.*

Union Pacific Railroad Company et al., defendants.

Answer of defendant Southern Pacific Company. (Filed April 6, 1908.)

932 United States Circuit Court, District of Utah. No. 993. In equity.

The United States of America, complainant, against Union Pacific Railroad Company; Oregon Short Line Railroad Company; The Oregon Railroad and Navigation Company; The San Pedro, Los Angeles and Salt Lake Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; Southern Pacific Company; Northern Pacific Railway Company; The Great Northern Railway Company; The Farmers' Loan and Trust Company; Edward H. Harriman; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers; Henry C. Frick; and William A. Clark, defendants.

933 The separate answer of the defendant Southern Pacific Company to the original petition of the United States of America.

This defendant now, and at all times hereafter, saving to itself all manner of benefit and advantage of exception which can or may be taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained, or to so much and such parts thereof as this defendant is advised, it is material or necessary for it to make answer unto, answering, says:

(1) It admits that it and the other corporations mentioned in Subdivision I of the petition were at the times alleged in said petition and are now common carriers employed in the transportation of

freight and passengers within and among those States and Territories of the United States in and through which the transportation lines owned and operated by them, respectively, are located, and not further or otherwise, but were and are to that extent engaged in trade and commerce among the several States and with foreign countries.

(2) It has no knowledge respecting the matters alleged in Subdivision II of the petition.

(3) It admits that defendant Union Pacific Railroad Company since January 1, 1901, has owned and operated and now owns and operates lines of railroad extending from Council Bluffs, Iowa, to Ogden, Utah; from Kansas City, Missouri, to Denver, Colorado; from Denver to Cheyenne, Wyoming; and from Julesburg to La Salle, Colorado; and it admits that said lines of railroad, except the line from Julesburg to La Salle, were constructed by the corporations named in the petition with the aid in lands and bonds of the United States granted by the acts of Congress approved July 1, 1862 (12 Stat., 479), and July 2, 1864 (13 Stat., 356), and the acts amendatory of and supplementary to the said acts.

(4) It is without knowledge of the consolidation of the corporations formerly owning the above-named lines into "The Union Pacific Railway Company," but is informed and believes that such consolidation was effected on January 24, 1880.

(5) It admits that the Central Pacific Railroad Company of California was organized under the laws of the State of California, and it admits that the Western Pacific Railroad Company was also organized under the laws of said State. It admits that the said Central Pacific Railroad Company of California and the said Western Pacific Railroad Company were consolidated into and under the name, style, and title of "Central Pacific Railroad Company." It admits that said Western Pacific Railroad Company constructed a line of railroad from San Francisco to Sacramento, California, and that said Central Pacific Railroad Company of California commenced the construction, and after the consolidation aforesaid the corporation formed by such consolidation completed the said railroad from Sacramento, California, to Ogden, Utah, where it connects with the main line of the Union Pacific Railroad Company.

(6) It refers to the said acts of Congress approved July 1, 1862 (12 Stat., 489), July 2, 1864 (13 Stat., 356), and June 20, 1874 (18 Stat., 111), for answer to the allegations of the petition respecting the aid granted in bonds and land to, and the duties and responsibilities imposed by said acts upon, the corporations aided and authorized by said acts to construct the railroads therein mentioned and provided for, and to the several acts and joint resolutions of Con-

gress amendatory of and supplementary to the aforesaid acts. (12 Stat., 538; 13 Stat., 504; 13 Stat., 573; 14 Stat., 355; 14 Stat., 356; 14 Stat., 79; 14 Stat., 290; 15 Stat., 39; 15 Stat., 79; 15 Stat., 324; 15 Stat., 348; 16 Stat., 56; 16 Stat., 121; 16 Stat., 430; 17 Stat., 508; 18 Stat., 200; 18 Stat., 453; 20 Stat., 56; 20 Stat., 169; 24 Stat., 488; 25 Stat., 382; 25 Stat., 439.)

(7) It admits that the defendants Oregon Short Line Railroad Company and The Oregon Railroad and Navigation Company own and operate the lines of railroad alleged in said petition; and it admits that they and said Union Pacific Railroad Company, respectively, operate important branch lines of railroad.

(8) It is without knowledge respecting the control of the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation Company by the Union Pacific Railroad Company.

(9) It is without knowledge of the ownership by the Oregon Railroad and Navigation Company in 1901 or at any other time of any steamships, or of the ownership of stock of the Portland and Asiatic Steamship Company, as alleged in the petition.

(10) It admits that it was on January 1, 1901, and still is the owner of a large majority of the capital stock of corporations which separately own and operate connecting links of a line of railroad extending from New Orleans, in the State of Louisiana, and Galveston, in the State of Texas, and through the States of Louisiana and Texas and the Territories of New Mexico and Arizona, and the States of California and Oregon to Los Angeles and San Francisco and other points in California, and to Portland, Oregon.

(11) It admits that in 1901 it also owned and operated, has ever since owned and operated and now owns and operates lines of steamships between New York and New Orleans, New York and Galveston, and between New Orleans and Havana, which connect at New Orleans and Galveston with the said rail lines.

(12) It admits that on January 1, 1901, it owned, has ever since owned and now owns all the capital stock of the Central Pacific Railway Company, a corporation organized and existing under the laws of the State of Utah, and avers that said Central Pacific Railway Company succeeded to the ownership of and now owns the railroad from San Francisco to Ogden with the branch lines formerly owned by the Central Pacific Railroad Company as originally existing and as constituted by the consolidation aforesaid with the said Western Pacific Railroad Company; but it avers that this defendant on and prior to the 1st day of January, 1901, and ever since that date has held, possessed, and operated, and still holds, possesses, and operates all the railroads of said Central Pa-

cific Railway Company with their appurtenances under and by virtue of instruments of lease theretofore made and entered into.

(13) It avers that said Central Pacific Railroad Company, as originally existing and as constituted by the consolidation aforesaid with the Western Pacific Railroad Company, was unable to pay its indebtedness to the Government of the United States, arising from the issue of Government bonds under the provisions of the aforesaid acts of Congress to aid in the construction of said railroad from San Francisco to Ogden, at the maturity of said indebtedness, and was also unable to pay its indebtedness evidenced by its own bonds, aggregating large amounts, as such indebtedness matured during and prior to the year 1899.

(14) It avers that the said Central Pacific Railway Company, organized as aforesaid under the laws of the State of Utah, acquired by purchase from said Central Pacific Railroad Company, on or about the 29th day of July, 1899, the railroad constructed as aforesaid from San Francisco to a connection with the Union Pacific Railroad at Ogden, with its various branches; and that the power of said Central Pacific Railroad Company to make such sale, and of the said Central Pacific Railway Company to make such purchase, was conferred upon the said corporations, respectively, by the laws of the States of Utah, Nevada, and California.

(15) It avers that such purchase and sale was made for the purpose of paying the indebtedness of said Central Pacific Railroad Company of the United States of America and to the holders of its own bonds; that all such indebtedness was thereby paid and discharged in full, and that the incorporation and organization of said Central Pacific Railway Company and the said purchase and sale and the payment of all such indebtedness were caused and brought about by this defendant, and that the means for paying and satisfying all such indebtedness and rehabilitating the railroads of the said Central Pacific Railway Company were provided and procured by or at the instance of this defendant.

(16) It admits that on January 1, 1901, it owned, has ever since owned, and still owns 100,500 shares out of a total of 200,000 shares of the capital stock of the Pacific Mail Steamship Company, and that said Pacific Mail Steamship Company, during all said period, has operated a line of steamships between San Francisco, the Hawaiian Islands, the Philippine Islands, and Chinese and Japanese ports, and also a line of steamships between San Francisco and Panama; but it denies that the said line of steamships, with the Panama Railroad Company and steamships operating in the Atlantic Ocean, forms a through line between New York and San Francisco via the Isthmus of Panama.



(17) It denies that the said rail lines from the Mississippi River to Portland, Oregon, by way of Los Angeles and San Francisco, were at any time in competition with the lines of the Union Pacific Railroad Company for the transportation of freight from points in the Mississippi Valley and in the Eastern States or elsewhere to Pacific coast points and points in Colorado and other interior States; and it denies that the steamship lines of this defendant between New York and New Orleans and between New York and Galveston, together with rail lines in connection therewith, were in active competition with the lines of the Union Pacific Railroad Company for a large amount of traffic originating on the Atlantic coast and in the Central States.

(18) It avers, on the contrary, that in the transcontinental lines of railroad reaching the Pacific coast south of Portland, Oregon,  
941 the Union Pacific Railroad was but a link about 1,000 miles in length, and the defendant Union Pacific Railroad Company merely an intermediate carrier, without any power to make rates upon such traffic; and that this defendant through its possession and operation of the Central Pacific Railroad, under lease as aforesaid and by its ownership of all the stock of the Central Pacific Railway Company, controlled that portion of such transcontinental line about 850 miles in length extending from Ogden, Utah, to the Pacific Ocean at San Francisco and other points in California, and no rate between the Missouri River or points east thereof and the Pacific coast south of Portland, or Asiatic ports, could be made by defendant Union Pacific Railroad Company, except with the consent of and by agreement with this defendant; and while the defendants Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company separately owned connecting lines of railroad operated as a single system extending from the Missouri River to Portland, Oregon, and operated certain small steamships between Portland and San Francisco, yet this defendant avers that such route via Portland was not only an impracticable route as a competitor of this defendant, but any attempt of said  
942 defendants to use it as such competitor would have greatly injured defendant Union Pacific Railroad Company, because this defendant would thereupon have preferred the rivals of said Union Pacific Railroad Company in routing and interchanging traffic at Ogden, and the business in tonnage and revenue which defendant Union Pacific Railroad Company would thereby have lost would have greatly exceeded the total volume of any business it could have secured over such impracticable route in competition with this defendant, so that the interest of defendant Union Pacific Railroad Company and the companies formerly owning its lines always prevented it and them from using or attempting to use the

said route via Portland in competition with this defendant upon any business to or from Pacific coast points south of Portland or to or from Asiatic ports.

(19) It denies that its rail line between San Francisco and Portland was in active competition with any ships of the Oregon Railroad and Navigation Company between San Francisco and Portland, and avers that competition between said lines was never practicable.

(20) It denies that the ships operated by the Portland and Asiatic Steamship Company in connection with the rail lines of the  
943 Union Pacific Railroad Company, or otherwise, between Portland, Oregon, and Asiatic ports, were ever in competition with the Pacific Mail Steamship Company.

(21) It denies that the line of railroad composed of the tracks of the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation Company between Ogden and Portland were ever in active competition with the lines of this defendant between said points.

(22) It denies that any competition between the system of railroads and steamships owned and controlled by this defendant and the system of railroads and any steamships owned or controlled by the Union Pacific Railroad Company, if any such competition ever existed, was substantial or that it included a large volume of traffic of any kind.

(23) It admits that the Atchison, Topeka and Santa Fe Railway Company for a period of more than eight years has been the owner and in control of the lines of railroad alleged in the petition, and that during such period it has been, and still is, competing with said Union Pacific Railroad Company and this defendant for a large volume of traffic to and from the Pacific coast and the Orient, and has been competing with the defendant Union Pacific Railroad Com-  
944 pany between the Missouri River and various points in Kansas, Colorado, and other States.

(24) It admits that the line of the Atchison, Topeka and Santa Fe Railway Company, since the completion of the same to San Francisco about the year 1900, constituted the only line of transportation by rail from the Pacific coast south of Portland, Oregon, to the Mississippi Valley and the East, except the lines of this defendant to the Gulf and the lines of the Central Pacific Railway Company operated by this defendant in connection with the Union Pacific Railroad Company until the completion of the San Pedro, Los Angeles and Salt Lake Railroad Company in the year 1905.

(25) It has no knowledge of the operation by the Atchison, Topeka and Santa Fe Railway Company of a line of steamships between San Diego, California, and Asiatic ports, but it denies that the traffic

handled by any such steamship line, if any such line was ever operated, competitive between this defendant and the Atchison, Topeka and Santa Fe Railway Company was of great volume and embraced both passengers and freight.

(26) It admits that the Northern Pacific Railway Company, the Great Northern Railway Company, and the Chicago, Burlington and Quincy Railroad Company is each the owner of the lines of railroad described in the petition, but it has no knowledge of the ownership of the stock of the Chicago, Burlington and Quincy Railroad Company or of any competition between any of said lines and the lines of the Union Pacific Railroad Company.

(27) It admits that the San Pedro, Los Angeles and Salt Lake Railroad Company operates a line of railroad extending from San Pedro on the Pacific Ocean in the State of California by way of Los Angeles through the States of California, Nevada, and Utah to Salt Lake City, Utah, but it is without knowledge of the character of the title of said company to said railroad, and it admits that said company as the owner of said railroad with its connections is a competitor of this defendant between certain points in southern California.

(28) This defendant admits that on or about the 20th day of February, 1901, defendant Union Pacific Railroad Company acquired 750,000 shares of the capital stock of this defendant of the aggregate par value of \$75,000,000 out of a total of 1,978,399 shares of the aggregate par value of \$197,839,900 then issued and outstanding, and it admits that thereafter and on or about the 26th day of February, 1902, said Union Pacific Railroad Company sold said 750,000 shares to defendant Oregon Short Line Railroad Company, which has ever since owned and still owns the same.

(29) It admits that thereafter on or about the 31st day of May, 1902, defendant Oregon Short Line Railroad Company acquired 150,000 additional shares of stock of this defendant, which it has ever since owned and still owns.

(30) It admits that when in 1904 this defendant created an issue of preferred stock which it offered to its stockholders for subscription *pro rata* at par, said Oregon Short Line Railroad Company, as the owner of 900,000 shares of the common stock of this defendant exercised its right and subscribed for and received and has ever since owned and still owns 180,000 shares of the preferred stock of this defendant; and that thereafter when in 1907 this defendant increased its preferred stock by an additional issue thereof which it offered to the holders of its outstanding stock for subscription *pro rata* at par, said Oregon Short Line Railroad Company, as the owner of 1,080,000 shares of the stock of this defendant, exercised its right and subscribed and received 162,000 additional shares of the preferred stock

of this defendant, and has ever since owned and still owns the same, so that said Oregon Short Line Railroad Company now owns  
947 900,000 shares of the common stock, and 342,000 shares of the preferred stock, making a total of 1,242,000 shares out of a total of 2,726,498 shares of the capital stock of this defendant issued and outstanding.

(31) It denies that defendants Harriman, Schiff, Kahn, Stillman, or Union Pacific Railroad Company caused the said preferred stock to be issued by this defendant.

(32) It admits that the stock of this defendant not owned by said Oregon Short Line Railroad Company is owned by a large number of individuals, firms, and corporations residing in many different places, but it denies that such stockholders, other than defendant Oregon Short Line Railroad Company, are or will be unable to elect the directors of this defendant if they should deem it to their interest to do so in opposition to those voted for by said Oregon Short Line Railroad Company.

(33) It admits that at the annual meetings of this defendant, held since the stock was so acquired and owned by said Oregon Short Line Railroad Company, such stock has constituted a majority of the shares represented at such meetings, and that by voting upon the said shares through its duly authorized agents and proxies,  
948 aided by the votes upon other shares owned by various other stockholders of this defendant, said Oregon Short Line Railroad Company, has been able to elect the directors of this defendant, but at no such meetings have any votes ever been cast by any such stockholder against the persons so elected.

(34) It denies that the Union Pacific Railroad Company or the Oregon Short Line Railroad Company controls or has ever controlled the management, operation, or business affairs of this defendant, or exercised any control whatsoever over it, except such as may result from the voting upon the stock of this defendant owned by said Oregon Short Line Railroad Company, as aforesaid, at meetings for the election of directors of this defendant.

(35) It admits that since April 3, 1901, a majority of the persons who have been elected directors of this defendant, have been at the same time directors of the defendant Union Pacific Railroad Company.

(36) It admits that defendant Harriman on April 3, 1901, became chairman of the executive committee and on the 26th day of September, 1901, became the president of this defendant and ever since has been and still is such chairman and president.

949 (37) It admits that the same person is the chief traffic officer, the same person the chief operating officer, and the same person the chief accounting officer of both companies; and that

said companies have jointly employed numerous commercial and other agents, but it avers that a large majority of the officers, agents, and employees of said companies are separate.

(38) It denies that through the purchase and ownership of said stock by the Union Pacific Railroad Company or by the Oregon Short Line Railroad Company, or from any other cause, there has been any suppression or restraint of competition in the transportation of commerce among the several States or with foreign countries, or any monopoly in the transportation of any such commerce; and it denies any knowledge of any conspiracy, combination, or contract in restraint of trade or commerce among the several States or between said States and foreign countries, or to suppress or restrain competition therein, or to monopolize or attempt to monopolize transportation of any such commerce.

(39) It is without knowledge respecting any of the other matters alleged in Subdivision IV of the said petition.

(40) It is also without knowledge of any of the matters  
950 alleged in Subdivision V of the petition.

(41) It admits that there is a competition between the San Pedro, Los Angeles, and Salt Lake Railroad Company and this defendant between certain points in California.

(42) It is without knowledge of any of the other matters alleged in Subdivision VI of the petition.

(43) This defendant admits that, pursuant to an agreement with the Atchison, Topeka and Santa Fe Railway Company, a corporation was organized under the laws of the State of California under the name, style, and title of the "Northwestern Pacific Railway Company," and that certain other corporations of the State of California whose capital stock was owned by this defendant and certain other corporations of the State of California whose capital stock was owned by the Atchison, Topeka and Santa Fe Railway Company were consolidated with and merged into said Northwestern Pacific Railway Company under the name, style, and title of "Northwestern Pacific Railroad Company," and that the capital stock of said Northwestern Pacific Railroad Company is owned equally by this defendant and by the Atchison, Topeka and Santa Fe Railway Company;

but it avers that all of the said corporations merged and con-  
951 solidated as aforesaid were incorporated under the laws of the State of California; and the said lines of railroad were situated wholly within the State of California, and the said consolidation and merger was and is authorized and provided for by the laws of said State.

(44) It denies all of the allegations of Subdivision VII of the petition in reference to any conspiracy, combination, or contract to restrain commerce among the several States or with foreign countries

or to restrain competition in any such commerce or to monopolize or attempt to monopolize transportation in any such commerce.

(45) This defendant is without knowledge of any of the other matters alleged in Subdivision VII of the petition.

(46) And this defendant denies all and all manner of unlawful combination and confederacy wherewith they are by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in its behalf most wrongfully sustained.

SOUTHERN PACIFIC COMPANY,  
By P. L. WILLIAMS, *Its Solicitor*.

ROBERT S. LOVETT, *Of Counsel*.

953 No. 993. United States Circuit Court, District of Utah.  
In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company et al., defendants.

The joint and several answer of defendants Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company. (Filed April 6, 1908.)

954 United States Circuit Court, District of Utah. No. 993.  
In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, The Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

955 The joint and several answer of the defendants, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and The Oregon Railroad and Navigation Company to the original petition of the United States of America.

These defendants, now and at all times hereafter saving to themselves all manner of benefit and advantage of exception which can

or may be taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

I. They admit that the defendants, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, and these defendants were at the times alleged in the petition and are now common carriers employed in the transportation of freight and passengers within and among those States and Territories of the United States in and through which the transportation lines owned and operated by them, respectively, are located, and not further or otherwise, and were and are to that extent, but to that extent only, engaged in trade and commerce among the several States and with foreign nations.

II. (1) They deny that from January 1, 1901, or at any time, the defendants, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, and James Stillman, with certain other persons who have joined with them from time to time, including the defendants, Henry H. Rogers and Henry C. Frick, have owned or controlled a majority of the capital stock of the Union Pacific Railroad Company.

(2) They admit that the defendant Edward H. Harriman on the 23d day of May, 1898, became and ever since has been and still is the chairman of the executive committee of the board of directors of said Union Pacific Railroad Company; and that on the 7th day of January, 1904, and not before, he became and ever since has been and still is president of said corporation.

(3) They admit that the said Jacob H. Schiff became a director of said Union Pacific Railroad Company on the 1st day of March, 1898, and continued to be a director of said company until the 10th day of April, 1906, when he resigned.

957 (4) They admit that the said Otto H. Kahn became a director of said Union Pacific Railroad Company on the 1st day of July, 1897, and continued to be a director of said company until the 10th day of April, 1906, when he resigned.

(5) They admit that the said James Stillman became a director of said Union Pacific Railroad Company on the 6th day of December, 1897, and continued to be a director of said company until the 13th day of February, 1908, when he resigned.

(6) They admit that the said James Stillman was a member of the executive committee of the board of directors from the 8th day of December, 1897, until the 13th day of February, 1908, and the said Otto H. Kahn was a member of said committee from the 8th day of December, 1897, until the 10th day of April, 1906.

(7) They admit that during all of said time the said Jacob H. Schiff and Otto H. Kahn were and still are members of a banking firm of the city of New York, doing business under the firm name and style of Kuhn, Loeb & Co., but deny that said banking house has been or is the "fiscal agent" of the defendant Union Pacific Railroad Company; and they admit that some of the stocks referred to in the petition were bought by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company, respectively, from time to time through said banking house and that some of the bonds issued by said companies were sold to said firm.

(8) They admit that defendant Henry H. Rogers became a director of said Union Pacific Railroad Company on the 8th day of October, 1901, and that defendant Henry C. Frick became a director of said Union Pacific Railroad Company on the 11th day of October, 1904, and that both the said Rogers and the said Frick have ever since been and still are members of said board of directors.

(9) Except as herein admitted, they deny each and every allegation of subdivision II of the petition.

III. (1) They admit that defendant, Union Pacific Railroad Company, in 1897, acquired and ever since has been and still is the owner of lines of railroad extending from Council Bluffs, Iowa, to Ogden, Utah; from Kansas City, Missouri, to Denver, Colorado; and from Denver, Colorado, to Cheyenne, Wyoming.

(2) They admit that the said line of railroad extending from Council Bluffs, Iowa, to Ogden, Utah, was constructed by a company incorporated by an act of Congress, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862 (12 Stat., 489), under the name, style, and title of "The Union Pacific Railroad Company"; and they admit that the said line of railroad, extending from Kansas City, Missouri, to Denver, Colorado, was constructed by a company originally incorporated by the Territory of Kansas as the "Leavenworth, Pawnee & Western Railroad Company," which afterwards assumed the name, style, and title of "Union Pacific Railroad Company, Eastern Division," and subsequently by authority of a joint resolution of Congress approved March 3, 1869 (15 Stat., 348), changed its name to "Kansas Pacific Railway Company"; and they also admit that the said line of railroad, extending from Denver, Colorado, to Cheyenne, Wyoming, was constructed by the "Denver Pacific Railway and Telegraph Company," a corporation organized under the laws of the Territory of Colorado.



(3) They deny that the Union Pacific Railroad Company, the company incorporated by the aforesaid act of Congress approved July 1, 1862, constructed a line of railroad from Julesburg to Denver, but aver that the said branch line of railroad extends from Julesburg to La Salle, Colorado, where it connects with the aforesaid line extending from Denver to Cheyenne, and that it was constructed by the Colorado Central Railroad Company, a corporation of the State of Colorado, which was subsequently consolidated with and merged into the Union Pacific, Denver and Gulf Railway Company, and thereafter was sold under foreclosure decrees against the last-named company, and the purchasers at such foreclosure sale afterward and on or about the 6th day of February, 1899, sold and conveyed the same to defendant Union Pacific Railroad Company, and that the said Union Pacific Railroad Company ever since has been and still is the owner thereof.

(4) They aver that the said lines of railroad owned by defendant Union Pacific Railroad Company and extending as aforesaid from Council Bluffs to Ogden, from Kansas City to Denver, and from Denver to Cheyenne, were located, laid out, constructed, connected, consolidated, and put into use and operation as a system of railroads under and pursuant to the aforesaid act of Congress approved July 1, 1862, and an act approved July 2, 1864, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862" (13 Stat., 356), and the several acts and joint resolutions of Congress amendatory of and supplementary to the aforesaid acts (12 Stat., 538; 13 Stat., 504; 13 Stat., 573; 14 Stat., 355; 14 Stat., 356; 14 Stat., 79; 14 Stat., 292; 15 Stat., 39; 15 Stat., 79; 15 Stat., 324; 15 Stat., 348; 16 Stat., 56; 16 Stat., 121; 16 Stat., 430; 17 Stat., 508; 18 Stat., 111; 18 Stat., 200; 18 Stat., 4; 20 Stat., 56; 20 Stat., 169; 24 Stat., 488; 25 Stat., 382; 25 Stat., 439); and they refer to the said acts and joint resolutions themselves for the provisions, purposes, and effect thereof.

(5) They admit that the said the Union Pacific Railroad Company, the said Kansas Pacific Railway Company, and the said Denver Pacific Railway and Telegraph Company were consolidated under and by virtue of the aforesaid acts of Congress, and that the corporation formed by such consolidation became and assumed the name, style, and title of "The Union Pacific Railway Company"; and they aver that such consolidation occurred on or about January 24, 1880.

(6) They aver that under and pursuant to the provisions of decrees of the Circuit Courts of the United States for the District of

Nebraska, the Southern District of Iowa, the District of Wyoming, the District of Colorado, and the District of Utah, rendered in 1897, in certain suits in equity commenced by F. Gordon Dexter and Oliver Ames, second, against the Union Pacific Railway Company and others for the foreclosure of the first mortgage of the Union Pacific Railroad Company upon the said line of railroad, with its appurtenances in said decrees described; and under the provisions of decrees rendered, respectively, by the same courts on the same dates in certain suits in equity, commenced by the United States of America as complainant against said the Union Pacific Railway Company and others for the foreclosure of the lien created by or arising under the aforesaid acts of Congress to secure the indebtedness to the United States of America for its bonds issued under the provisions of said acts to the Union Pacific Railroad Company, the said railroad extending from Council Bluffs, Iowa, to Ogden, Utah, with its appurtenances, was sold, and upon confirmation of the said sale and full compliance with all the terms and provisions of the decrees of the said courts in said causes the special master of the said courts duly conveyed the said railroad, with its appurtenances, so sold to Union Pacific Railroad Company, defendant herein, by deeds dated the 22d day of January, 1898, whereupon the possession of said railroads and other property so sold was surrendered and delivered by the receivers appointed in said suits to Union Pacific Railroad Company, defendant herein, which has ever since held and possessed and now hold and possess the same.

(7) They aver that under and pursuant to the provisions of decrees of the Circuit Courts of the United States for the District of Kansas and the Western District of Missouri, rendered on the 30th day of July, 1897, in certain suits in equity commenced by the United States of America, as complainant, against said the Union Pacific Railway Company and others for the foreclosure of the lien created by or arising under the aforesaid acts of Congress to secure the indebtedness to the United States of America for its bonds issued under the provisions of said acts to the Kansas Pacific Railway Company; and under and pursuant to the provisions of other decrees of the same courts and of the Circuit Court of the United States for the District of Colorado in suits in equity commenced by various parties to foreclose numerous mortgages executed by said Kansas Pacific Railway Company under its different corporate names, the said line of railroad extending from Kansas City, Missouri, to Denver, Colorado, with its appurtenances in said decrees described, was sold, and upon confirmation of the said sale and full compliance with all the terms and provisions of the decrees of said courts in said causes, the special master of said courts duly conveyed the said railroad, with its appurtenances, to Union Pacific

Railroad Company, the defendant herein, by deeds dated on or about the 19th day of April, 1898, whereupon the possession of said railroad and other property so sold was surrendered and delivered by the receivers appointed in said suits to Union Pacific Railroad Company, defendant herein, which has ever since held and possessed and now holds and possesses the same.

(8) They aver that under and pursuant to the provisions of decrees of the Circuit Courts of the United States for the Districts of Colorado and Wyoming, rendered on the 31st day of July, 1897, in certain suits in equity to foreclose the first mortgage of the Denver

Pacific Railway and Telegraph Company, the said line of railroad extending from Denver, Colorado, to Cheyenne, Wyoming, with its appurtenances in said decrees described, was sold and upon confirmation of the said sale and full compliance with all the terms and provisions of said decrees of said courts in said causes the special master of said courts duly conveyed the said railroad, with its appurtenances, to Union Pacific Railroad Company, defendant herein, by deeds dated on or about the 22d day of March, 1898, whereupon the possession of said railroad, with its appurtenances and other property so sold, was surrendered and delivered by the receivers appointed in said suits to Union Pacific Railroad Company, defendant herein, which has ever since held and possessed and now holds and possesses the same.

(9) They admit that the Central Pacific Railroad Company of California was organized under the laws of the State of California; and they admit that the Western Pacific Railroad Company was also organized under the laws of said State. They admit that the said Central Pacific Railroad Company of California and the said Western Pacific Railroad Company were consolidated into and under the name, style, and title of "Central Pacific Railroad Company."

They admit that said Western Pacific Railroad Company constructed a line of railroad from San Francisco to Sacramento,

California, and that said Central Pacific Railroad Company of California commenced the construction, and after the consolidation aforesaid the company formed by such consolidation completed the said railroad from Sacramento, California, to Ogden, Utah, where it connects with the main line of the Union Pacific Railroad Company.

(10) They refer to the said acts of Congress approved July 1, 1862 (12 Stat., 489), July 2, 1864 (13 Stat., 356), and June 20, 1874 (18 Stat., 111), for answer to the allegations of the petition respecting the aid granted in bonds and land to, and the duties and responsibilities imposed by said acts upon, the corporations aided and authorized by said acts to construct the railroads therein mentioned and provided for.

(11) They admit that defendant Oregon Short Line Railroad Company is now and since about the 16th day of March, 1897, continuously has been the owner of lines of railroad extending from the junction with the main line of the Union Pacific Railroad at Granger, Wyoming, to Huntington, Oregon, and of another line of railroad extending from Salt Lake City, Utah, to Butte, Montana—

the track in the State of Idaho between Pocatello and Mc-  
967 Cammon being common to both of said lines. They admit that defendant The Oregon Railroad and Navigation Company is and since about the 18th day of August, 1896, continuously has been the owner of a line of railroad extending from a connection with the line of the Oregon Short Line Railroad Company at Huntington, Oregon, to Portland, Oregon.

(12) They admit that each of these defendants is the owner of important lines of railroad as branches of the lines hereinbefore described; the branches of the lines owned by Union Pacific Railroad Company being located in the States of Nebraska, Kansas, Colorado, Wyoming, and Utah; the branches owned by the Oregon Short Line Railroad Company being located in the States of Utah, Idaho, Montana, and Wyoming; and the branches owned by The Oregon Railroad and Navigation Company being located in the States of Oregon, Washington, and Idaho.

(13) They admit that long prior to the date alleged in the petition the Union Pacific Railroad Company acquired and has ever since owned and still owns substantially all of the capital stock of the Oregon Short Line Railroad Company. They admit that long prior to the date alleged in the petition the Oregon Short Line Railroad  
Company acquired and has ever since owned and still owns  
968 substantially all of the capital stock of the Oregon Railroad and Navigation Company.

(14) They admit that by means of such stock ownership the Union Pacific Railroad Company has since its acquisition been able to elect, by voting upon such stock through its proxies, the directors of said Oregon Short Line Railroad Company, and that the latter, by voting upon said stock through its proxies, has elected the directors of The Oregon Railroad and Navigation Company; but they aver that the railroads and other property of the Oregon Short Line Railroad Company have at all times been controlled, managed, and operated by said Oregon Short Line Railroad Company in its own name and by its own officers and agents, and that the railroads and other property of The Oregon Railroad and Navigation Company have at all times been controlled, managed, and operated by The Oregon Railroad and Navigation Company in its own name and by its own officers and agents.

(15) They admit that the lines of railroad owned by these defendants, respectively, have been and are operated as one system and that said lines extending from Kansas City, Missouri, and Council Bluffs, Iowa, to Salt Lake City and Ogden, Utah, Butte, Montana, and Portland, Oregon, have composed and still compose continuous through lines operated harmoniously and, so far as affecting the shipping and traveling public, practically as if owned and operated by a single company.

(16) They aver that long prior to July 2, 1890, when the so-called "antitrust act" of Congress was approved, the Union Pacific Railway Company, the consolidated corporation organized and existing under the acts of Congress, as hereinbefore alleged, acquired a large majority of the stock of the Oregon Short Line and Utah Northern Railway Company, which constructed the lines of railroad now owned by defendant Oregon Short Line Railroad Company, as well as a portion of the lines now owned by the defendant San Pedro, Los Angeles and Salt Lake Railroad Company, and that long prior to said July 2, 1890, said Oregon Short Line and Utah Northern Railway Company acquired a large majority of the capital stock of the Oregon Railway and Navigation Company, the corporation which constructed and formerly owned the line of railroad now owned by defendant The Oregon Railroad and Navigation Company, extending from Huntington to Portland, Oregon, with various branches; and long prior to July 2, 1890, the said lines of railroad extending from Kansas City, Missouri, and Council Bluffs, Iowa, to Salt Lake City and Ogden, Utah, Butte, Montana, and Portland, Oregon, were and ever since have been operated harmoniously as one system and as continuous lines and, so far as affecting the shipping and traveling public, practically as if owned and operated by a single corporation.

(17) They aver that the said lines of railroad and all other property of said Oregon Short Line and Utah Northern Railway Company were sold under decrees of the circuit courts of the United States for the districts of Utah, Wyoming, Idaho, and Montana, foreclosing mortgages thereon on or about the 9th day of January, 1897, and that the purchasers at such sale caused to be incorporated the defendant Oregon Short Line Railroad Company, and conveyed to it the railroads and properties so sold. They aver that the said line of railroad extending from Huntington to Portland, Oregon, and all other property of the Oregon Railway and Navigation Company were sold under decrees of the circuit courts of the United States for the district of Oregon, foreclosing mortgages thereon on or about the 9th day of July, 1896, and the purchasers at such sale caused to be incorporated the defendant, the Oregon Railroad and Navigation

Company, and conveyed to it the railroads and properties so sold.

971 (18) They admit that in the year 1901 the Oregon Railroad and Navigation Company owned three steamships averaging about 1,350 net tons each, plying between Portland and San Francisco, by way of the Willamette and Columbia Rivers and the Pacific Ocean; and they aver that in the year 1904 the San Francisco and Portland Steamship Company, a corporation of the State of California, was organized; that all its stock was acquired by the Oregon Railroad and Navigation Company, and that two of said steamships were transferred by charter to said San Francisco and Portland Steamship Company, and that said San Francisco and Portland Steamship Company has since operated and now regularly operates two steamships—one of 2,317 tons and one of 1,836 tons—between San Francisco and Portland, via the Pacific Ocean and the Willamette and Columbia Rivers.

(19) They deny that the Oregon Railroad and Navigation Company ever operated a line of steamships or any steamships between Portland, Oregon, and Japan, and China, or other Asiatic ports. They admit that on or about the 14th day of January, 1901, the Portland and Asiatic Steamship Company was incorporated under the laws of the State of Oregon with a capital of \$100,000, and  
972 that all of its capital stock was acquired and has ever since been and still is owned by said the Oregon Railroad and Navigation Company; and they admit that said Portland and Asiatic Steamship Company has sometimes operated steamships between Portland, Oregon, and Asiatic ports under charter, but they deny that said steamship company has ever owned, or now owns, any steamships, or has ever operated, or now operates, any regular line of steamships.

(20) They aver that the said Portland and Asiatic Steamship Company was incorporated and that the ships chartered and operated by it were chartered and operated for the benefit of the traffic of the railroad lines of the Oregon Railroad and Navigation Company—that is to say, to afford an outlet by way of Portland and the Columbia River for the grain and flour grown and milled on the line of the Oregon Railroad and Navigation Company in eastern Oregon and the State of Washington which otherwise would have moved via the rails of the Northern Pacific Railway Company and Great Northern Railway Company to Puget Sound and the traffic would have been lost to the Oregon Railroad and Navigation Company, and they aver that the operation of the steamships of said Portland and Asiatic  
973 Steamship Company has of itself been unprofitable and resulted in a large loss to said company every year, except one

during the war between Japan and Russia, and that it was inaugurated and is maintained only because, in the judgment of the Oregon Railroad and Navigation Company, the losses sustained in the operation of said steamships are more than compensated by retaining for the rails of the Oregon Railroad and Navigation Company and for the mills and merchants on its lines the grain and flour traffic which otherwise would have moved to Puget Sound and been lost to said company and to them.

(21) They deny that it has been or ever was practicable for the said steamships operated by the Portland and Asiatic Steamship Company to compete to any considerable or substantial extent with lines of steamers operated between San Francisco and Asiatic ports and Puget Sound and Asiatic ports for traffic originating in the interior of the United States or on the Atlantic seaboard.

(22) They admit that the Southern Pacific Company was, on January 1, 1901, and still is the owner of a large majority of the capital stock of corporations which separately own and operate connecting links of a line of railroad extending from New Orleans,  
974 in the State of Louisiana, and Galveston, in the State of Texas, and through the States of Louisiana and Texas and the Territories of New Mexico and Arizona and the States of California and Oregon to Los Angeles and San Francisco and other points in California and to Portland, Oregon.

(23) They admit that said Southern Pacific Company in 1901 owned and operated and has ever since owned and operated and now owns and operates lines of steamships between New York and New Orleans and between New York and Galveston and between New Orleans and Havana, which connect at New Orleans and Galveston with the rail lines controlled by it.

(24) They aver that the Central Pacific Railroad Company, the corporation formed by the consolidation of the Central Pacific Railroad Company of California and the Western Pacific Railroad Company, and which constructed and formerly operated the said railroad from San Francisco to a connection with the Union Pacific Railroad Company at Ogden, was unable to pay its indebtedness to the Government of the United States, arising from the issue to it of Government bonds as aforesaid at the maturity of said indebtedness, and was also unable to pay its indebtedness evidenced by its  
own bonds, aggregating a large amount, as such indebtedness  
975 matured during and prior to the year 1899; that the "Central Pacific Railway Company" was organized under and by virtue of the laws of the State of Utah, and acquired by purchase from the said consolidated Central Pacific Railroad Company, on or about the 29th day of July, 1899, the said railroads so constructed

from San Francisco to a connection with the main line of the Union Pacific Railroad Company at Ogden, Utah, with its various branches; and that the power of said Central Pacific Railroad Company to make such sale and of the Central Pacific Railway Company to make such purchase was expressly conferred upon and existed in them, respectively, by the laws of the States of Utah, Nevada, and California.

(25) They aver that such purchase and sale were made for the purpose of paying the indebtedness of said Central Pacific Railroad Company to the United States of America and to the holders of its own bonds; that all such indebtedness was thereby paid and discharged in full; and that the incorporation and organization of the said Central Pacific Railway Company and the said purchase and sale and the payment of all such indebtedness were caused and brought about by the defendant Southern Pacific Company; and that the means for paying and satisfying all such indebted-  
976 ness were provided and procured by or at the instance of the said Southern Pacific Company.

(26) They admit that on January 1, 1901, said Southern Pacific Company owned, has ever since owned, and still owns 100,500 shares out of a total of 200,000 shares of the capital stock of the Pacific Mail Steamship Company, and that said Pacific Mail Steamship Company during all said period has operated a line of steamships between San Francisco, the Hawaiian Islands, the Philippine Islands, and Chinese and Japanese ports, and also a line of steamships between San Francisco and Panama. But they deny that the said line of steamships, with the railroad of the Panama Railroad Company and steamships operating in the Atlantic Ocean, forms a through line between New York and San Francisco via the Isthmus of Panama.

(27) They deny that the said rail lines of the Southern Pacific Company from the Mississippi River to Portland, Oregon, by way of Los Angeles and San Francisco, were at any time in competition with the said lines of the Union Pacific Railroad Company for the transportation of freight from points in the Mississippi Valley and in the Eastern States or elsewhere to the Pacific coast and  
977 points in Colorado and other interior States; and they deny that the steamship lines of the Southern Pacific Company between New York and New Orleans and New York and Galveston, together with the rail lines of said company in connection therewith, were in active competition with the lines of the Union Pacific Railroad Company for a large amount of traffic originating on the Atlantic coast and in the Central States.

(28) They aver, on the contrary, that in the transcontinental lines of railroad reaching the Pacific coast south of Portland, Oregon,



the Union Pacific Railroad was but a link, about 1,000 miles in length, and the defendant Union Pacific Railroad Company merely an intermediate carrier without any power to make rates upon such traffic, and that the defendant Southern Pacific Company, through its possession and operation of the Central Pacific Railroad and its ownership of all the stock of the Central Pacific Railway Company, controlled that portion of such transcontinental line, about 850 miles in length, extending from Ogden, Utah, to the Pacific Ocean at San Francisco and other points in California, and no rate between the Missouri River or points east thereof and the

Pacific coast south of Portland or Asiatic ports could be made  
978 by these defendants except with the consent of and by agreement with said Southern Pacific Company; and while these defendants separately owned connecting lines of railroad, operated as a single system as aforesaid, extending from the Missouri River to Portland, Oregon, and operated certain small steamships between Portland and San Francisco, as aforesaid, yet they aver that such route via Portland was not only an impracticable route as a competitor of said Southern Pacific Company, but any attempt of these defendants to use it as such competitor would have greatly injured defendant Union Pacific Railroad Company, because said Southern Pacific Company would thereupon have preferred the rivals of said Union Pacific Railroad Company in routing and interchanging traffic at Ogden, and the business in tonnage and revenue which defendant Union Pacific Railroad Company would thereby have lost would have greatly exceeded the total volume of any business it could have secured over such impracticable route in competition with said Southern Pacific Company, so that the interest of defendant Union Pacific Railroad Company and the companies formerly owning its lines always prevented it and them from using or attempting to use the said route via Portland in competition with  
said Southern Pacific Company upon any business to or from  
979 the Pacific coast south of Portland or to or from Asiatic ports.

(29) They deny that the rail line of said Southern Pacific Company between San Francisco and Portland was in active competition with the ships of the Oregon Railroad and Navigation Company plying between San Francisco and Portland, and aver that competition between said lines was never practicable.

(30) They deny that ships operated by the Portland and Asiatic Steamship Company between Portland, Oregon, and Asiatic ports, in connection with the rail lines of the Union Pacific Railroad Company, or otherwise, were ever in competition with the Pacific Mail Steamship Company and the rails of the Southern Pacific Company.

(31) They deny that the lines of railroad of the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation

Company between Ogden, Utah, and Portland, Oregon, were ever in competition with the lines of said Southern Pacific Company between said points, and aver that such competition was never practicable.

(32) They deny that any competition between the system of railroads and steamships owned and controlled by the Union Pacific Railroad Company and the system of railroads and steamships owned and controlled by the Southern Pacific Company, if any such competition ever existed, was substantial or that it included a large volume of traffic of any kind.

(33) They admit that the Atchison, Topeka and Santa Fe Railway Company has been for a period of more than eight years the owner and in control of lines of railroad, as alleged in Subdivision III of the petition, and admit that the lines of the Union Pacific Railroad Company, in connection with the line of the Central Pacific Railway Company, operated by the Southern Pacific Company, have been during such period and still are competitors of the Atchison, Topeka and Santa Fe Railway Company for a large volume of traffic to and from the Pacific coast, and that the lines of the Union Pacific Railroad Company and the Atchison, Topeka and Santa Fe Railway Company have been and are competitive between various points in Kansas, Colorado, and other States.

(34) They admit that the lines of the Atchison, Topeka and Santa Fe Railway Company, since the completion of the same to San Francisco, California, in the year 1900, constituted the only line of transportation by rail from the Pacific coast south of Portland to the Mississippi Valley and the East except the lines of the Southern Pacific Company to the Gulf of Mexico and the lines of the Central Pacific Railway Company operated by the Southern Pacific Company in connection with the Union Pacific Railroad until the completion of the San Pedro, Los Angeles and Salt Lake Railroad in the year 1905.

(35) They have no knowledge of the operation by the Atchison, Topeka and Santa Fe Railway Company of a line of steamships between San Diego, California, and Asiatic ports, as alleged in the petition, but they deny that the traffic handled by any such steamship line, if any such line was ever operated, competitive between said Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company and the Union Pacific Railroad Company, was of great volume, and embraced both passengers and freight.

(36) They admit that the Northern Pacific Railway Company, the Great Northern Railway Company, and the Chicago, Burlington and Quincy Railroad Company each owns and operates lines of railroad substantially as alleged in said petition; but they deny that the

lines of said Northern Pacific Railway Company in and of themselves are competitive with the lines of these defendants, and they admit that the lines of the Chicago, Burlington and Quincy  
982 Railroad Company are competitive with the lines owned and operated by the defendant Union Pacific Railroad Company to a limited extent and between certain points.

(37) They deny that traffic between the Pacific coast and Asiatic ports and points on and east of the Missouri and Mississippi Rivers is competitive between the lines of the Union Pacific Railroad Company and connections owned by it, and the lines of said Northern Pacific Railway Company and The Great Northern Railway Company and connections and steamship lines controlled by them.

(38) They admit that the defendant The San Pedro, Los Angeles and Salt Lake Railroad Company is the owner of a line of railroad extending from San Pedro on the Pacific Ocean, in the State of California, by way of Los Angeles, through the States of California, Nevada, and into Utah to Salt Lake City, and that most of said line is directly owned by said corporation, and the remainder of it is operated under lease or trackage contracts, and that the same constitutes a continuous line between San Pedro and Salt Lake City; but they deny that by said contract or otherwise there ever was any suppression or restriction of competition by said line with the lines of  
any defendant herein.

983 (39) They admit that the Denver and Rio Grande Railway Company owns a line of railroad from Salt Lake City, Utah, to Denver, Colorado, and that it is a competitor of defendant Union Pacific Railroad Company, but not of defendant Southern Pacific Company.

(40) Except as herein admitted they deny each and every allegation of Subdivision III of the petition.

IV. (1) They deny that in the spring of 1901, or at any other time, the defendants, Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company, or any of them, conspired to restrain trade and commerce among the several States and between said States and foreign countries carried on by said Union Pacific Railroad Company and said Southern Pacific Company, or any other company or any steamship lines, or to monopolize or attempt to monopolize any such trade and commerce, or to restrain or prevent competition among said railway systems, or any other railway systems, and said steamship lines, or any other steamship lines, in respect to any such commerce, or to deprive the public of the facilities and advantages in  
the carrying on of such trade and commerce through the inde-  
984 pendent competition, if any there was, of said railway systems and steamship lines or other railway systems or steamship lines, or that said defendants, or any of them, ever entered into a

combination or conspiracy to effect a virtual or substantial consolidation of said Union Pacific Railroad Company and any other trans-continental railway companies or steamship companies, or to place restraint upon any competitive commerce carried on by such companies, if any such there was, or to monopolize or attempt to monopolize the same, or to suppress any competition existing between any of said companies or lines by the means alleged in the petition or otherwise.

(2) They admit that on or about the 20th day of February, 1901, defendant Union Pacific Railroad Company acquired by purchase from said firm of Kuhn, Loeb & Company 750,000 shares of the capital stock of said Southern Pacific Company of the aggregate par value of \$75,000,000 out of 1,978,399 shares of the aggregate value of \$197,839,900 then issued and outstanding; but they deny that the said stock was purchased or acquired in pursuance of any conspiracy or combination or for any of the purposes alleged in said petition.

985 (3) They admit that thereafter, to wit, on or about the 26th day of February, 1902, defendant Union Pacific Railroad Company sold and delivered the said 750,000 shares of the stock of said Southern Pacific Company to defendant Oregon Short Line Railroad Company, which has ever since owned and still owns the same.

(4) They admit that thereafter, to wit, on or about the 31st day of May, 1902, defendant Oregon Short Line Railroad Company acquired by purchase from said Kuhn, Loeb & Company, 150,000 additional shares of stock of said Southern Pacific Company, which said Oregon Short Line Railroad Company has ever since owned, and still owns; but they deny that the said additional shares were purchased or acquired in pursuance of any conspiracy or combination, or for any of the purposes alleged in said petition.

(5) They admit that thereafter, when, in 1904, defendant Southern Pacific Company created an issue of preferred stock, which it offered to its stockholders for subscription *pro rata* at par, said Oregon Short Line Railroad Company, as the owner of 900,000 shares of the common stock of said Southern Pacific Company, exercised its right, and subscribed for and received and has ever since owned and still owns 180,000 shares of the preferred stock of said Southern Pacific Company; and they aver that there-  
986 after in 1907, when said Southern Pacific Company increased its said preferred stock by an additional issue thereof, which it offered to the holders of its outstanding stock for subscription *pro rata* at par, said Oregon Short Line Railroad Company, as the owner of 1,080,000 shares of the stock of said Southern Pacific Company, exercised its right, and subscribed for and received 162,000 additional shares of the preferred stock of said Southern

Pacific Company, and it has ever since owned and still owns the same; so that said Oregon Short Line Railroad Company now owns 900,000 shares of common stock and 342,000 shares of preferred stock making a total of 1,242,000 shares of the capital stock of said Southern Pacific Company, out of a total of 2,726,498 shares issued and outstanding; but they deny that the defendants Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company caused said Southern Pacific Company to issue said preferred stock; and deny that it was acquired by said Oregon Short Line Railroad Company or the Union Pacific Railroad Company in pursuance of any conspiracy or for any of the purposes or with the intent alleged in said petition.

(6) They deny that the stock of the Southern Pacific Company so acquired and owned by defendant Oregon Short Line Railroad Company is voted at the dictation and instance of the defendants Harriman, Stillman, Schiff, and Kahn, and that the directors of said company have been selected by the said Harriman, Stillman, Schiff, and Kahn.

(7) They deny that the Union Pacific Railroad Company or the Oregon Short Line Railroad Company controls or has ever controlled the management, operation, or business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as may result from the voting upon the stock of said Southern Pacific Company owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern Pacific Company.

(8) They admit that at the annual meetings of the stockholders of the Southern Pacific Company held since the stock was so acquired and owned by said Oregon Short Line Railroad Company such stock has constituted a majority of the shares represented at such meetings; and they admit that by voting upon the said shares, through its duly authorized agents and proxies, aided by the votes upon other shares owned by various other stockholders of said Southern Pacific Company, the defendant Oregon Short Line Railroad Company has been able to elect the directors of said Southern Pacific Company, but they aver that at no such meeting have any votes ever been cast by any stockholder against the persons so elected.

(9) They admit that since April 3, 1901, a majority of the persons who have been directors of said Southern Pacific Company were at the same time directors of said Union Pacific Railroad Company.

(10) They admit that the stock of said Southern Pacific Company not owned by defendant Oregon Short Line Railroad Company is owned by a large number of individuals, firms, and corporations residing in many different places; but they deny that said stock-

holders are or will be unable to elect the directors of said Southern Pacific Company, if they should deem it to their interest to do so, in opposition to those voted for by said Oregon Short Line Railroad Company; and they aver that the reason why said stockholders have not heretofore elected the directors of said company is that they have been satisfied with the directors nominated and elected by the agents and proxies of said Oregon Short Line Railroad Company in conjunction with the agents and proxies of other stockholders.

(11) They admit that defendant Harriman on the 3d day 989 of April, 1901, became chairman of the executive committee, and on the 26th day of September, 1901, became the president of said Southern Pacific Company and ever since has been and still is such chairman and president.

(12) They admit that the same person is the chief traffic officer, the same person the chief operating officer, and the same person the chief accounting officer of both companies, and that said companies have jointly employed numerous commercial and other agents; but they aver that a very large majority of the agents, officers, and employees of said companies are separate.

(13) They admit that since about the 26th day of August, 1904, the Pacific Mail Steamship Company, the Portland and Asiatic Steamship Company, and the San Francisco and Portland Steamship Company have had the same officers and agents; but they deny that there ever was any competition between any of said steamship companies or said railroad or steamship lines or that such commerce has been monopolized.

(14) They aver that although the railroad of the Union Pacific Railroad Company and the said Central Pacific Railroad physically formed a continuous line from the Missouri River to the 990 Pacific Ocean, yet almost one-half the length of said line, to wit, from Ogden to San Francisco, with many branches, was owned by the Central Pacific Railway Company and was controlled and operated by the Southern Pacific Company, and no rate for the transportation of passengers or property over the said line between the Missouri River and the Pacific Ocean could be made without the concurrence of both the Union Pacific Railroad Company and the Southern Pacific Company; and the only means by which the Union Pacific Railroad Company could secure control of the said Central Pacific Railroad was to secure control of the said Southern Pacific Company, which owned every share of the stock of said Central Pacific Railway Company. That the lines of railroad now owned by defendant Union Pacific Railroad Company had been greatly improved while in the hands of receivers in the foreclosure proceedings hereinbefore mentioned, and prior to January 1, 1901, it recognized the necessity, in the interest of the public

as well as of itself, of further improving, and it had determined to further improve, the said railroads, particularly the line between Council Bluffs and Ogden, in order to be able to develop its traffic and serve and accomplish the object of its construction, and to handle such traffic efficiently and economically. Unless the  
991 line of the Central Pacific Railway Company, extending from Ogden to the Pacific Ocean, was likewise improved and put and maintained in condition to handle promptly and efficiently the transcontinental traffic passing over the Union Pacific Railroad, the improvement of the latter as contemplated would be practically futile. The said Central Pacific Railroad had been mortgaged for large amounts, and the Central Pacific Railway Company was without means or credit to procure the means necessary to bring by improvements its said line of railroad up to anything approximating the condition and efficiency of said Union Pacific Railroad; and the Southern Pacific Company was also without such means or credit, as practically all of its assets and the assets of the various corporations controlled by it were mortgaged or otherwise pledged. The stock of defendant Southern Pacific Company formerly owned by Collis P. Huntington, who died in August, 1900, together with other stock amounting to nearly one-half of the shares of said company, was for sale, and if the same had been acquired by any interest adverse to defendant Union Pacific Railroad Company its plans, efforts, and object to improve its line of railroad between Council Bluffs and Ogden and the substantial object of the  
992 aforesaid acts of Congress providing for a continuous line and system from the Missouri River to the Pacific Ocean would have been defeated and rendered futile, and defendant Union Pacific Railroad Company would furthermore have been deprived of any opportunity to become, and rival lines would have become, the preferred connection of said Southern Pacific Company and Central Pacific Railway Company at Ogden, Utah, and the value of the lines of railroad and the credit of the Union Pacific Railroad Company would have been greatly and permanently depreciated and impaired. For the purpose of procuring the improvement of the said Central Pacific Railroad and to bring it up to the standard and degree of efficiency approximately of the line of the Union Pacific Railroad, and in order that said Union Pacific Railroad Company should become and securely remain the preferred connection of said Southern Pacific Company and Central Pacific Railway Company at Ogden, and thereby secure the unrouted traffic of said companies interchanged at Ogden, and in order to protect itself against the acquisition and control of said Central Pacific Railway Company by adverse interests to these defendants, and without any intent or purpose in any wise to suppress or restrain any com-

993 petition in interstate or foreign commerce, the said 900,000 shares of the capital stock of said Southern Pacific Company were purchased and acquired as hereinbefore alleged by defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company and are now so held by the company last named.

(15) They aver that such acquisition greatly increased and strengthened the credit not only of said Southern Pacific Company, but also of these defendants, and enabled them to procure means for improving the said railroads and increasing the efficiency of the same in the public interest upon much better terms and more readily than otherwise would have been possible. Immediately after such acquisition of the said stock, the improvement of the lines of the said Central Pacific Railway between Ogden and the Pacific Ocean, as well as the lines of these defendants, was commenced, and ever since has been actively prosecuted, so that between the 1st day of January, 1901, and the 1st day of January, 1908, there has been expended (in addition to ordinary expenditures for maintenance) for betterments and improvements of the line of the said Central Pacific Railway Company between Ogden and San Francisco alone about \$24,000,000,

being approximately \$30,000 per mile; the great "cut-off" 994 across Salt Lake, Utah, has been constructed and completed, the grades and curves have been greatly reduced, and the said line has been shortened about 51 miles. And these defendants aver that such improvements would not and could not have been made except for the improvement of the credit of both companies resulting from the acquisition by defendant Union Pacific Railroad Company and Oregon Short Line Railroad Company of the stock of the Southern Pacific Company as aforesaid, thereby securing for the Union Pacific Railroad Company an adequate and permanent outlet and establishing upon uniform standards a continuous line and railroad system from the Missouri River to the Pacific Ocean, as contemplated by said acts of Congress.

(16) They aver that the reports of defendant Union Pacific Railroad Company and Southern Pacific Company, returned under oath to the Interstate Commerce Commission for the fiscal year ending June 30, 1901, and for every fiscal year since that date, have shown that a majority of the directors of the Southern Pacific Company were at the same time directors of the Union Pacific Railroad Company; that since the 1st day of July, 1901, the records of said commission have shown that the same person was chief traffic officer of said Southern Pacific Company and of these defendants; that the purchase 995 in 1901 of 750,000 shares and in 1902 of 150,000 additional shares of said Southern Pacific Company by Union Pacific Railroad Company and Oregon Short Line Railroad Company became known to said Interstate Commerce Commission and



to the public at large soon after said purchases were made; that the fact that said Southern Pacific Company and these defendants had many common officers and agents, and the relations existing between said Southern Pacific Company and these defendants in all their details became known as they occurred to the Interstate Commerce Commission and to the public at large, and have been published constantly throughout the United States, not only in the news press but by advertisements of these defendants and of said Southern Pacific Company, and have never been denied or in any way concealed. They aver that the acquisition by the Union Pacific Railroad Company and Oregon Short Line Railroad Company of said 750,000 shares of the stock of the Southern Pacific Company in 1901, and of said additional 150,000 shares of such stock in 1902 by defendant Oregon Short Line Railroad Company, were actual purchases of said stock made in good faith, and were completed and fully executed

by the delivery of the certificates for said 750,000 shares in 1901 and of said 150,000 shares in 1902 and by the payment of the price therefor at the time of such delivery. That the election of directors of said Southern Pacific Company and the election and appointment of all the officers and agents of said Southern Pacific Company and all other matters and things complained of in the petition herein, so far as they have occurred, were merely the natural and necessary consequences and results of said purchase of the said stock. That the acquisition of the preferred stock of said Southern Pacific Company by defendant Oregon Short Line Railroad Company as aforesaid by the exercise of subscription rights did not change and has not changed the relative voting strength or position of the said Oregon Short Line Railroad Company from what it was upon the completion of the purchase of said two lots aggregating 900,000 shares of the common stock of the Southern Pacific Company as aforesaid. And these defendants aver that by reason of the premises, the right to maintain this suit and all right of action or prosecution by the Government of the United States for or on account of the acquisition or ownership by either of these defendants of stock of said Southern Pacific Company accrued, if at all, more than three years and more than five years next before the commencement of this suit, and is therefore barred by the statutes of the United States in such cases made and provided.

(17) They deny each and every allegation of Subdivision IV of the petition respecting any combination or conspiracy between the defendants Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company, for any of the purposes or with any of the intents alleged; and deny each and every allegation of said Subdivision IV of said petition not herein expressly admitted.

V. (1) They deny that the defendants Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company in the spring of 1901, or at any other time, caused the Union Pacific Railroad Company to acquire a majority of the stock of the Northern Pacific Railway Company pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign nations, to monopolize, or attempt to monopolize, such trade and commerce, or to suppress any competition; and they deny all the allegations of subdivision V of the petition respecting any conspiracy or combination for that or any other purpose between any of the defendants to this suit.

(2) They admit that in the year 1901 said Oregon Short Line Railroad Company purchased \$37,023,000 par value of the 998 common stock, and \$41,085,000 par value of the preferred stock of the Northern Pacific Railway Company, and that at the time of such purchase the total stock of the Northern Pacific Railway Company issued and outstanding was of the aggregate par value of \$155,000,000, but deny that such purchase was in pursuance of any conspiracy or combination or for any of the purposes alleged in the petition.

(3) They admit the incorporation of the Northern Securities Company, and also the retirement of the preferred stock by an additional issue of common stock of the Northern Pacific Railway Company as alleged in said petition.

(4) They admit the sale and transfer of said stock to the Northern Securities Company, and the receipt by said Oregon Short Line Railroad Company of \$82,491,871 par value of the stock of said Northern Securities Company represented by certificates issued in the name of Edward H. Harriman and Winslow S. Pierce, who was at that time general counsel of defendant Union Pacific Railroad Company; and they admit that neither the said Harriman nor the said Pierce had any personal interest in said shares.

(5) They admit the commencement of a suit by the United States of America against said Northern Securities Company 999 and others, and the decision of said suit as alleged in the petition.

(6) They admit the commencement thereafter of a suit by said Oregon Short Line Railroad Company, Edward H. Harriman, Winslow S. Pierce, and The Equitable Trust Company of New York, as alleged in the petition; and they admit that the relief sought by the complainants in said suit was denied by the decrees entered therein. But they aver that the said courts by said decrees approved the distribution by the Northern Securities Company of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company complained of by defendant Oregon Short Line Rail-

road Company and its codefendants in said suit; and that as a result of said distribution and of the approval of the same in said suit the defendant Oregon Short Line Railroad Company, during the year 1904, received from the Northern Securities Company, as the interest and share of said Oregon Short Line Railroad Company of the assets so distributed, 281,828 shares (being 18.18 per cent) of the capital stock of the Northern Pacific Railway Company, and 216,520 shares (being 17.32 per cent) of the capital stock of The Great Northern

Railway Company; and that no doubt as to the right of said 1000 Oregon Short Line Railroad Company to so receive and hold the said shares was intimated by any of the courts in such suit.

(7) They aver that defendant Oregon Short Line Railroad Company upon the final decision of said suit proceeded from time to time to sell the stock of the Northern Pacific Railway Company, and of the Great Northern Railway Company, so received by it, as such sales could be advantageously affected; and that by such sales the amount of such stock so held has been steadily reduced, so that at the date of the commencement of this suit the said Oregon Short Line Railroad Company had sold all but 1,128 shares of the aggregate par value of \$112,800 of the stock of the Northern Pacific Railway Company, and all but 4,041 shares of the aggregate par value of \$404,100 of the stock of the Great Northern Railway Company, which it had received from such distribution of the assets of said Northern Securities Company; and said Oregon Short Line Railroad Company, at the date of the commencement of this suit, also owned 32,516 partially paid shares of the Northern Pacific Railway Company and 38,745 partially paid shares of the Great Northern Railway Company, for which it had subscribed upon increases of the stock of said companies since said distribution was made.

1001 (8) They deny that the defendants Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company, or any other persons associated with them, caused the said suit of Oregon Short Line Railroad Company, Edward H. Harriman, Winslow S. Pierce, and the Equitable Trust Company of New York against Northern Securities Company to be prosecuted for the purpose of effectuating any conspiracy to restrain trade and commerce or to smother competition or to monopolize any trade and commerce as in said petition alleged.

(9) They deny each and every allegation of said Subdivision V not herein expressly admitted.

VI. (1) They admit that prior to the year 1902 defendant William A. Clark, together with others, caused to be incorporated the defendant The San Pedro, Los Angeles & Salt Lake Railroad Company, but deny that it was for the purposes alleged in the petition; and

refer to the articles of incorporation of said company for the purposes of its incorporation.

(2) They admit that defendants Harriman and Clark, on or about the 9th day of July, 1902, entered into and executed an agreement in writing, and that "Exhibit A" to the petition is a true copy of such agreement; but they deny that said agreement was entered into for any of the purposes alleged in Subdivision VI of the petition, or for any purpose not set forth or mentioned in said "Exhibit A"; and they aver that the said Harriman in entering into and executing said contract was acting for defendant Oregon Short Line Railroad Company and for no other corporation or person.

(3) They admit that, pursuant to said contract, "Exhibit A," other contracts between the said Harriman and the said Clark and between the Oregon Short Line Railroad Company and the San Pedro, Los Angeles and Salt Lake Railroad Company were made and entered into in June and July, 1903, but deny that any of such other contracts were of the character or for any of the purposes alleged in said Subdivision VI of the petition.

(4) They admit that on or about the 7th day of June, 1903, a contract in writing bearing that date was made and entered into between William A. Clark, individually and as trustee for his associates, and the defendant Edward H. Harriman, as trustee for the defendant Oregon Short Line Railroad Company, and defendant The Farmers' Loan and Trust Company, of which "Exhibit B" annexed to the petition is a true copy, and that stock of the defendant The San Pedro, Los Angeles and Salt Lake Railroad Company was deposited with and is still held by said The Farmers' Loan and Trust Company, as stipulated and provided in and by said contract "Exhibit B."

(5) They deny each and every allegation of a conspiracy or combination by and between defendants Harriman, Schiff, Kahn, Stillman, Clark, Union Pacific Railroad Company, and Oregon Short Line Railroad Company, or any of them, for any of the objects or purposes mentioned in Subdivision VI of the petition, or for any other purpose; and they deny each and every allegation in Subdivision VI of the petition not herein in this subdivision expressly admitted; and they aver the facts to be as follows, viz:

(a) The Oregon Short Line and Utah Northern Railway Company, the corporation which formerly owned the lines of railroad now owned by defendant Oregon Short Line Railroad Company, resolved prior to the year 1890 to construct a line of railroad from Salt Lake City, Utah, to Los Angeles, California, with various branches; and in 1890 it had constructed and put in operation the said line from Salt Lake City, via Sandy, Provo, Juab, and Leaming-

ton to Milford, Utah, a distance of 221.9 miles, and various  
1004 branches, all of which are more particularly described as  
“(Parcel 1)” and “(Parcel 2)” of article second in the con-  
tract, “Exhibit A,” to the petition herein. It had complied with  
all the laws of the Territory of Utah and the State of Nevada neces-  
sary to entitle it to construct said line and had surveyed and located  
the said line; and under due corporate action it had prepared and  
filed maps and profiles of the same in the proper land offices in Utah  
and Nevada to entitle it to and it had acquired the right of way for  
said line across the lands of the United States in a general south-  
westerly direction from Milford through Utah and across the State  
of Nevada to the boundary line between the States of Nevada and  
California. The said maps had been approved under the rules of the  
Department of the Interior, and the Oregon Short Line and Utah  
Northern Railway Company had graded and completed the roadbed  
of said line ready for the rails from Milford to the boundary line  
between Utah and Nevada, and had practically completed the grad-  
ing of said line from said boundary line southwesterly to Calientes,  
Nevada, a distance of about 339 miles from Salt Lake City; and had  
graded a branch of said line from Calientes to Pioche, Nevada.

(b) On account of its inability at that time to procure  
1005 the money necessary to complete the said line said Oregon  
Short Line and Utah Northern Railway Company discon-  
tinued and suspended the work of constructing said line in 1891. The  
said company continued in such financial difficulty that on or about  
the 13th day of October, 1893, all its railroads and other assets were  
placed in the hands of receivers, who administered the same until  
the sale thereof under the decrees of the Circuit Courts of the United  
States for the District of Utah, Wyoming, Montana, and Idaho on  
or about the 9th day of January, 1897, when they were bought by or  
for defendant Oregon Short Line Railroad Company as hereinbefore  
alleged.

(c) The defendant Oregon Short Line Railroad Company after  
its acquisition of the railroads and other assets of the Oregon Short  
Line and Utah Northern Railway Company upon the foreclosure  
sale thereof as aforesaid until 1901 was financially unable actively  
to resume the construction of said line from Milford to Los Angeles;  
and in its endeavor to provide for the completion of said line of  
railroad it conveyed that portion of said line, including the com-  
pleted grade from Milford to the boundary line between the States  
of Utah and Nevada, to the “Utah and Pacific Railroad Com-  
pany,” a corporation of the State of Utah, all the capital stock  
1006 of which was owned by defendant Oregon Short Line Rail-  
road Company, and conveyed that portion of said line from  
the boundary line between Utah and Nevada to the boundary line

between Nevada and California, including the partially constructed grade of the main line from the Utah boundary line to Calientes and of the branch line from Calientes to Pioche to the "Utah, Nevada and California Railroad Company," a corporation of the State of Nevada, all of the capital stock of which was owned by defendant Oregon Short Line Railroad Company; and to construct, complete, and own that portion of said line which was to be situated in the State of California the defendant Oregon Short Line Railroad Company caused to be incorporated and acquired all the capital stock of the "Utah, Nevada and California Railroad Company in California."

(d) Early in 1901 said Utah and Pacific Railroad Company and said Utah, Nevada and California Railroad Company, aided and assisted by defendant Oregon Short Line Railroad Company, actively resumed the construction of the said line of railroad from Milford to Los Angeles, and to that end put a large force of men at work laying track upon and repairing, where necessary, the grade which had been constructed as aforesaid from Milford to Calientes  
1007 and in doing other work necessary in the construction of the said line to Los Angeles.

(e) On or about the date when the construction of said line was resumed in 1901 as aforesaid defendant, the San Pedro, Los Angeles and Salt Lake Railroad Company was incorporated under the laws of the State of Utah, with power to build or acquire railroads in that State, but it did not acquire, under the laws of Nevada, the right to build or acquire railroads in that State, or acquire the right under the laws of California to build or acquire any railroad north or east of Riverside until long after that date. It had acquired a line of railroad of inferior character extending from San Pedro to Los Angeles, a distance of twenty-four miles, and branches from Los Angeles to Pasadena and Glendale, a distance of about twenty miles, which were the only railroads owned or controlled by said the San Pedro, Los Angeles and Salt Lake Railroad Company when the construction of the said line from Milford to Los Angeles was resumed by defendant Oregon Short Line Railroad Company and the companies controlled by it as aforesaid.

(f) The said the San Pedro, Los Angeles and Salt Lake Railroad Company at that time controlled, through the ownership of  
1008 stock or otherwise, the Utah and California Railway Company, a corporation of the State of Utah, authorized to build a railroad in the State of Utah, but not in the States of Nevada or California.

(g) The said the San Pedro, Los Angeles and Salt Lake Railroad Company had not at said time located any line of railroad or acquired any rights of way or done any work of constructing a railroad

easterly or northerly of Riverside, California, a distance of sixty miles from Los Angeles, and said Utah and California Railway Company had not at said time located any line of railroad or acquired any rights of way or done any work of constructing a railroad.

(h) Soon after the incorporation of said the San Pedro, Los Angeles and Salt Lake Railroad Company it attempted to seize and appropriate to its own use the right of way across the State of Nevada and the partially completed grade between Calientes and Pioche, located and constructed by the Oregon Short Line and Utah Northern Railway Company as hereinbefore alleged, and then owned by the Utah, Nevada and California Railroad Company; and to that end said the San Pedro, Los Angeles and Salt Lake Railroad Company ran surveys over the said lines and prepared maps and profiles adopting the same as its own and attempted to file the same in 1009 the local land office of the United States in Nevada for the purpose of securing the right of way and also acquired a pretended tax title thereto from Lincoln County, Nevada, and also attempted by its laborers and other employees to seize and take forcible possession of the same.

(i) Thereupon and in order to protect its possession of and title to said grade and right of way across the State of Nevada, said Utah, Nevada and California Railroad Company commenced in the Circuit Court of the United States for the District of Nevada a suit against said the San Pedro, Los Angeles and Salt Lake Railroad Company and said Utah and California Railway Company and others, and upon the hearing of said cause an injunction was issued restraining and enjoining the said defendants from interfering with the possession and rights of said complainant; and said Utah, Nevada and California Railroad Company in a suit against said the San Pedro, Los Angeles and Salt Lake Railroad Company and others in Lincoln County, Nevada, procured a decree canceling and setting aside the said pretended tax title of the defendant the San Pedro, Los Angeles and Salt Lake Railroad Company; and the contests in the land offices of the United States between said Utah, Nevada 1010 and California Railroad Company and said the San Pedro, Los Angeles and Salt Lake Railroad Company and said Utah and California Railway Company involving the said right of way were finally decided by the Secretary of the Interior in favor of the said Utah, Nevada and California Railroad Company.

(j) As a result of such decisions, rendered prior to the execution of the contract, "Exhibit A" to the petition, herein on July 9, 1902, the defendant Oregon Short Line Railroad Company and said Utah and Pacific Railroad Company and said Utah, Nevada and California Railroad Company, controlled by it, established their right to the partially completed railroad and the located line and right of

way therefor from Salt Lake City, Utah, to the boundary lines between the States of Nevada and California and were rapidly proceeding with the completion of said line to Los Angeles, while the said the San Pedro, Los Angeles and Salt Lake Railroad Company had in operation only the aforesaid line from San Pedro to Los Angeles and branches from Los Angeles to Pasadena and Glendale.

(k) And these defendants are informed and believe, and upon such information and belief allege, that defendant the San Pedro, Los Angeles and Salt Lake Railroad Company would  
1011 never have undertaken the construction of a line of railroad from Los Angeles to Salt Lake City, except for its expectation and belief, and the expectation and belief of the defendant Clark, that it could acquire without compensation the right of way and partially constructed line located and constructed as aforesaid by the Oregon Short Line and Utah Northern Railway Company from Milford through Utah and across the State of Nevada to the California boundary line, and that defendant Oregon Short Line Railroad Company would not extend the said line by construction from Milford to Los Angeles; and that when it appeared from the contests, suits, and decisions aforesaid that the said right of way and partially completed grade could not thus be acquired, and that defendant Oregon Short Line Railroad Company would construct and extend its own line from Milford to Los Angeles, the said the San Pedro, Los Angeles and Salt Lake Railroad Company and the said Clark would have abandoned the previously conceived purposes and intention to construct and establish a line of railroad from Los Angeles to Salt Lake City, but for the ability to negotiate and execute the contract "Exhibit A" to the petition herein providing for the construction and establishment of such a line under the terms and  
1012 conditions in said contract set forth.

(6) They deny that the said "Exhibit A" to the petition or that anything done in executing and carrying out the same has suppressed, restrained, or in any manner restricted any commerce among the several States or with foreign countries.

(7) They deny that the aforesaid act of Congress approved July 2, 1890, or any other law of the United States, was intended to or could constitutionally prohibit the making or carrying out of such agreement and contract, and aver that the construction of railroads in the States of Utah, Nevada, and California by the corporations of said States, respectively, or by corporations of other States authorized by the said States to exercise their corporate powers therein, and all agreements relating to the construction or the abandonment of the construction of such railroads are matters wholly to be dealt with by the laws of the said States respectively; and any act of Congress intended or construed to prohibit or regulate or in any man-



ner interfere with such contracts, corporate powers, and matters is in excess of the powers of Congress under the Constitution of the United States, and is therefore void.

(8) They aver that although prosecuted diligently after 1013 the making of said contract, "Exhibit A" to the petition, the work of constructing the said railroad from Milford to Los Angeles was not completed and the said line opened for business until the first day of May, 1905; and these defendants aver that on the 9th day of July, 1902, when the said agreement was made and entered into, there was not then and from the nature of the work to be done there could not for several years be any competition of any kind between the parties to the said agreement in the transportation of commerce; and the possibility or probability of any such competition and of any restraint or restriction thereon was too remote and contingent to be prohibited by or to come within the provisions of the said act of Congress approved July 2, 1890.

(9) They aver that the said contract, "Exhibit A" to the petition, was made and entered into on the 9th day of July, 1902, and not afterward, and they aver that by reason of the premises the right to maintain this suit and all right of action or prosecution by the Government of the United States for or on account of said contracts or for or on account of any of the matters and things alleged in Sub-division VI of the petition, accrued, if at all, more than three years 1014 and more than five years next before the commencement of this suit and is therefore barred by the statutes of the United States in such cases made and provided, and all right of the petitioner to relief herein is barred by the said statutes.

VII. (1) These defendants are without any knowledge respecting the purchase of shares of the Atchison, Topeka and Santa Fe Railway Company by defendants Harriman, Schiff, Kahn, Stillman, Rogers, and Frick, or any of them, and of any conspiracy or combination between the defendants last mentioned for the purchase of such stock or for any other purpose, and of the election of defendants Frick and Rogers as directors of the Atchison, Topeka and Santa Fe Railway Company, and of the reasons for such election.

(2) They admit that during the year 1906 defendant Oregon Short Line Railroad Company purchased \$10,000,000 par value of the preferred stock of the Atchison, Topeka and Santa Fe Railway Company, which it still owns, and they aver that neither of these defendants has ever owned any other stock of the Atchison, Topeka and Santa Fe Railway Company; and they also aver that the capital stock of the Atchison, Topeka and Santa Fe Railway Company out- 1015 standing at the time of such purchase was, and still is, of the aggregate par value of \$216,199,530.

(3) They deny that in the purchase of said stock or otherwise these defendants, or either of them, conspired or combined, or have ever conspired or combined, with the defendants Harriman, Schiff, Kahn, Stillman, Rogers, and Frick, or any of them, for the purchase of stock of the Atchison, Topeka and Santa Fe Railway Company, or to restrain trade and commerce among the several States and with foreign nations, or to monopolize, or attempt to monopolize, such trade and commerce, or to restrain and prevent competition among any railroad systems, or for any other purpose alleged or mentioned in the petition herein.

(4) They deny that the lines of railroad of the Atchison, Topeka and Santa Fe Railway Company are operated in harmony with the lines of defendant Union Pacific Railroad Company and of the Southern Pacific Company under agreements and understandings as to rates and divisions of business, and that competition between such lines has been eliminated or in anywise restricted.

(5) They are without knowledge of any agreements between the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company respecting the extension or abandonment of the extension of their lines in California, and are without knowledge of the incorporation of the "Northwestern Pacific Railway Company" and of the ownership of its stock.

(6) They deny all the other allegations of Subdivision VII of the petition.

VIII. And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said petition charged without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for these defendants to make answer unto and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied the same is not true to the knowledge or belief of these defendants, all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct and humbly pray to be hence dismissed with their reasonable costs and charges in their behalf most wrongfully sustained.

UNION PACIFIC RAILROAD COMPANY,  
By JOHN W. BALDWIN, *Its Solicitor*.

1017 THE OREGON RAILROAD AND NAVIGATION COMPANY,  
By WILLIAM W. COTTON, *Its Solicitor*.

OREGON SHORT LINE RAILROAD COMPANY,  
By P. L. WILLIAMS, *Its Solicitor*.

P. L. WILLIAMS,  
ROBERT S. LOVETT,  
*Of Counsel*.

1018 The joint and separate answer of the defendants, William A. Clark and of the San Pedro, Los Angeles and Salt Lake Railroad Company, to the original bill of the United States of America filed herein. (Filed April 6, 1908.)

1019 In the Circuit Court of the United States for the District of Utah. No. 933. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company; Oregon Short Line Railroad Company; the Oregon Railroad and Navigation Company; The San Pedro, Los Angeles and Salt Lake Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan and Trust Company; Edward H. Harri-man; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers; Henry C. Frick, and William A. Clark, defendants.

1020 The joint and separate answer of the defendants, William A. Clark and of the San Pedro, Los Angeles and Salt Lake Railroad Company, to the original bill of the United States of America filed herein.

These defendants, now and at all times hereafter saving to themselves all manner of benefit and advantage of exception which can or may be taken to the errors, uncertainties, and other imperfections in the complainant's bill contained, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say:

I. They admit that the defendant, the San Pedro, Los Angeles and Salt Lake Railroad Company, is now and since about the first day of May, 1905, has been a common carrier engaged in the transportation of freight and passengers within the States of California, Nevada, and Utah, and between the termini of its railroad at San Pedro, in the State of California, and at Salt Lake City, in the State of Utah; and since that time has participated in the transportation of freight and passengers under joint and through tariffs made effective therefor according to law, over the lines of railroad

1021 owned by the Union Pacific Railroad Company, Oregon Short Line Railroad Company, Denver and Rio Grande Railroad Company, and to a limited extent in southern California with the Southern Pacific Company and the Atchison, Topeka and Santa Fé Railway Company, and among the several States of the United States into and through which the transportation lines owned and operated by said companies, respectively, and not further or other-

wise, and to that extent the defendant San Pedro, Los Angeles and Salt Lake Railroad Company is now and since about May 1st, 1905, has been engaged in trade and commerce among the several States and with foreign nations.

II. For answer to the second paragraph of complainant's bill, these defendants say that they have no knowledge, information, or belief in respect to said several matters in said second paragraph alleged except the statements and allegations of the complainant contained in said paragraph; wherefore these defendants neither admit nor deny the same, but leave the complainant to make such proof as it may see proper or be advised.

III. For answer to the third paragraph of complainant's 1022 bill, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, they admit that the defendant San Pedro, Los Angeles and Salt Lake Railroad Company is now the owner of or operates a line of railroad extending from East San Pedro, a port on the Pacific Ocean, in the State of California, and thence by way of Los Angeles through the States of California and Nevada and into the State of Utah to the city of Salt Lake, in said State of Utah; that the said company is also the owner of certain branch lines of railroad extending from Los Angeles, in California, to Glendale and Pasadena; that that part of its said line of railroad lying between Riverside Junction and Colton and San Bernardino is used and operated under a lease whereby the right to use the tracks of said Southern Pacific Company between said points is conferred upon defendant, San Pedro, Los Angeles and Salt Lake Railroad Company; and that a portion of the track of the Atchison, Topeka and Santa Fe Railway Company extending from Colton through San Bernardino and Barstow to Daggett, in California, is operated upon by the said San Pedro, Los Angeles and Salt Lake Railroad Company by virtue of a certain lease whereby the joint use of that portion of the tracks of said Atchison, To- 1023 peka and Santa Fe Railway Company is granted for a term of years to the said San Pedro, Los Angeles and Salt Lake Railroad Company. They admit that the remainder of the line of railroad from San Pedro to Salt Lake City aforesaid is owned by the said San Pedro, Los Angeles and Salt Lake Railroad Company, and that the entire line constitutes a continuous line of railroad between said points. They admit and aver that the line of railroad of the said San Pedro, Los Angeles and Salt Lake Railroad Company was completed between its said termini on or about the first day of May, 1905, and also admit and aver that it has been at all times since its completion, through its connection with the Oregon Short Line Railroad Company at Salt Lake City and also by and through a connection which it has and maintains with the Denver and Rio Grande

Railroad Company at Salt Lake and at Provo, in Utah, a competitor with the Southern Pacific Company.

They deny that there is or has been for any reason or by any cause any suppression of competition by any act or thing done or suffered to be done by the said San Pedro, Los Angeles and Salt Lake Railroad Company in its relation to any traffic having origin or destination upon or beyond the lines of railroad owned and operated  
1024 by the said San Pedro, Los Angeles and Salt Lake Railroad Company or any other traffic.

IV. For answer to the fourth paragraph of complainant's bill these defendants say that they have no knowledge, information, or advice save that contained in the several allegations of said Paragraph IV of complainant's bill, and for want of such information or knowledge these defendants are unable specifically to admit or deny the several allegations therein contained, and leave the complainant to make such proofs as it may be advised.

V. For answer to the fifth paragraph of complainant's bill, these defendants say that they have no knowledge, information, or advice save that contained in the several allegations of said Paragraph V of complainant's bill, and for want of such information or knowledge these defendants are unable specifically to admit or deny the several allegations therein contained, and leave the complainant to make such proofs as it may be advised.

VI. For answer to the sixth paragraph of complainant's bill these defendants aver that prior to the twentieth day of  
1025 March, 1901, there existed in the State of California a certain railroad corporation known as the Los Angeles Terminal Railway Company, which owned and operated a line of railroad extending from East San Pedro, bordering upon the harbor of San Pedro in California, to Los Angeles, California, with a branch line extending from Los Angeles to Pasadena, and with another branch line extending from a point on the last-named branch to a terminus at Verdugo in California, in all about 45 miles of railroad; and

That there also existed a corporation known as the Los Angeles Terminal Land Company, which owned certain lands at and near the terminus of said railroad at San Pedro, California;

That there also existed at the same time a corporation known as the California Improvement Company, the same being a corporation organized under the laws of the State of Illinois, which was the owner of the stocks of the first two mentioned corporations; and

That within a few months prior to said March 20th, 1901, the stock and interests in said corporations were owned by defendant Clark and certain other persons;

That said persons, owners of the stock of the said several  
1026 corporations above named, about March 12th, 1901, caused

articles of association to be made for the creation of a corporation to be known as the San Pedro, Los Angeles and Salt Lake Railroad Company, which articles of association were duly executed; and on March 20th, 1901, filed in the proper offices in the State of Utah, whereby the said San Pedro, Los Angeles and Salt Lake Railroad Company became on March 20th, 1901, legally incorporated under the laws of the State of Utah;

That in compliance with the laws of the State of Nevada, and to enable it to own and acquire a railroad in the State of Nevada, the said San Pedro, Los Angeles and Salt Lake Railroad Company, on April 8th, 1901, filed its articles of incorporation, duly certified, in the proper offices in the said State of Nevada; and

That on the thirteenth day of April, 1901, in order to comply with the laws of the State of California, the said San Pedro, Los Angeles and Salt Lake Railroad Company filed duly certified copies of its articles of incorporation in the office of the secretary of state of the State of California, and that it filed its articles of incorporation in the county of Los Angeles, in said State, on the fifteenth day  
1027 of April; in the county of San Bernardino, on the tenth day of December, 1901; and in Riverside County in California on the tenth day of April, 1902.

These defendants allege that the purpose of said incorporators who created the said corporation was duly expressed by them in the articles of incorporation of said company; and that the corporate powers and the business and purposes of said corporation were duly expressed in the said articles of incorporation under which the said San Pedro, Los Angeles and Salt Lake Railroad Company, among other things, was given power "to own and operate a main line of railroad from Salt Lake City, in the State of Utah, through the following counties in the said State: Salt Lake, Utah, Tooele, Juab, Millard, Beaver, and Iron; also through Lincoln County in Nevada, and also through the counties of San Bernardino, Riverside, Orange, and Los Angeles, in California, to a terminal point on the harbor of San Pedro, in Los Angeles County, California"; and it also thereby had power to construct, own, and operate certain branch lines of railroad particularly described in its said articles; and thereby it also had power "to buy, own, maintain, operate, and further extend" the railroad rights, properties, and franchises in the  
1028 State of Utah, which are so located as to be conveniently appropriated as a part of the main line of its said railroad, or as branch lines thereof; and to purchase like properties in the State of Nevada and the State of California; and particularly to purchase the railroad properties and franchises of the Los Angeles Terminal Railroad Company; and to build and operate certain extensions and branches more particularly described in said articles; and to acquire

real estate for the operation of wharves on navigable waters; and also to operate a telegraph line and own and hold water rights, lands, and materials necessary for the purposes of the corporation. It also had power "to purchase or otherwise acquire and own" the capital stock or securities, or any part of the capital stock or securities, of any other railroad corporation or corporations.

These defendants submit that the purpose for which the said San Pedro, Los Angeles and Salt Lake Railroad Company was organized and created is fully and particularly specified and set forth in its said articles of incorporation, reference to which is hereby made and prayed to be considered herein, specifically set forth, and the same will be shown and exhibited upon the hearing of this cause; and

These defendants expressly deny that the alleged purpose 1029 set forth in the first clause of the sixth paragraph of complainant's bill was or is a true statement of the purpose of the said San Pedro, Los Angeles and Salt Lake Railroad Company or of its incorporators, and alleges that its only purpose was that expressed in its said articles of incorporation.

These defendants admit that the said San Pedro, Los Angeles and Salt Lake Railroad Company acquired a line of railway from San Pedro to Los Angeles, which, defendants aver, was by and through a conveyance of the properties of the Los Angeles Terminal Railway Company, which conveyance was delivered to and accepted by the said San Pedro, Los Angeles and Salt Lake Railroad Company on March 21st, 1901, under which the said San Pedro, Los Angeles and Salt Lake Railroad Company became the owner of a line of railroad extending from East San Pedro aforesaid through Los Angeles to Pasadena and Glendale, as above mentioned.

In respect to the allegation of said bill that the defendant San Pedro, Los Angeles and Salt Lake Railroad Company was "engaged in the construction of the balance of its line when the defendants Harriman, Schiff, Kahn, Stillman, the Union Pacific Railroad Company, and Oregon Short Line Railroad Company, for the sole 1030 purpose of restraining trade and commerce among the States and with foreign nations and monopolizing same, as hereinbefore more particularly set forth, and of preventing competition between said railways then in process of construction; and the said Union Pacific Railroad system, including said Southern Pacific system, brought suits of various kinds in the courts for the purpose of harassing and injuring the said railway company and preventing the acquisition of the necessary right of way for the same; put large gangs of men at work to interfere with and prevent construction of the said line: threatened said Clark and his associates in the said San Pedro, Los Angeles and Salt Lake Railroad Company that if said line was completed the same would be paralleled by the Oregon

Short Line, its value would be destroyed, and its ability to secure business or operate at a profit would be taken away, which said threats, litigation, and other interference were continued for a period of many months"; these defendants deny the said several allegations and each of them, and aver the truth to be, in respect of said several allegations, that a controversy did arise about April 1st, 1901, between the said San Pedro, Los Angeles and Salt Lake Railroad

Company and the said Oregon Short Line Railroad Company, 1031 and one of its auxiliary and subsidiary companies known as the Utah, California and Nevada Railroad Company. The said controversies were with respect to the conflicting rights and claims of said companies to a certain right of way for a railroad extending from the eastern boundary of the State of Nevada, beginning at a point known as Uvada, in Lincoln County, in said State; thence in a southwesterly course across the State of Nevada to the southwestern boundary thereof; and also a branch line of the railroad right of way extending from a point upon the line above described, designated and known as Clover Valley Junction, said point being distant about forty miles southwesterly from said Uvada, the point of beginning of the above-described line, and extending thence in a northerly or northwesterly direction to the town of Pioche, in Lincoln County, in the said State, a distance of about thirty miles.

The contention and claim of the said Oregon Short Line and its said auxiliary company was based upon and grew out of a certain law in the United States entitled, "An act granting to railroads the right of way across the public land of the United States," approved March 3, 1875, the title and claim of the said Short Line Company being substantially as follows:

1032 The Nevada Pacific Railway Company was a corporation created in the year 1889, existing under the laws of the State of Nevada, and its franchise authorized it to construct a railroad connecting with the railroad of the Utah Central Railway Company's railroad at a point on the eastern boundary of the State of Nevada, now known as Uvada, near Pioche in Lincoln County, Nevada, and extending thence in a southwesterly course across the said State of Nevada to the western boundary line of the said State, with two branch lines thence extending into the counties of White Pine and Nye.

That on the twenty-seventh day of July, 1889, the said Nevada Pacific Railway Company, together with the Oregon Short Line Railroad Company, the Utah and Northern Railway Company, and other railroad corporations of the States of Utah, Idaho, and of the United States, pursuant to lawful authority, made and entered into certain articles of consolidation and agreements, whereby said



several corporations agreed to and with each other to unite and consolidate and to unite, form, and consolidate their respective organizations, capital stock railroads and franchises of every nature and description into one company, to continue in existence for a period of fifty years, and to be called and known as "Oregon 1033 Short Line and Utah Northern Railway Company."

For a more particular and complete statement of the terms and conditions of the said articles of consolidation, reference is hereby made to the same, which will be exhibited to this honorable court in due course.

That in the years 1889 and 1890 said Oregon Short Line and Utah Northern Railway Company resolved to construct its railroad upon its right of way from Milford, in the State of Utah, to a point now known as Uvada, on said line, and thence into Lincoln County, Nevada, upon the line authorized under the charter privileges prior to the execution of said agreement of consolidation and owned and enjoyed by the said Nevada Pacific Railway Company.

That in pursuance of said determination the said Oregon Short Line and Utah Northern Railway Company adopted its line of railroad and located the same, caused a copy of its articles of incorporation and due proof of its organization under the same and maps and profiles showing its line of railroad as located and adopted by it to be filed with the local land offices of the United States in Nevada and Utah and to be forwarded therefrom to the Secretary of the

Interior, and also caused maps and profiles of the line of its 1034 railroad from Milford, Utah, to the Utah-Nevada State line at the point now known as Uvada, and also from the said last-named point southwesterly, through the State of Nevada, to the southwestern boundary thereof, and also extending from a point upon said line then known as and called Clover Valley Junction, but now Caliente, and extending thence in a northerly or northwesterly direction to the town of Pioche, in Lincoln County, in the said State, a distance of about thirty miles, to be duly prepared and submitted to the proper officers of the Land Department of the United States, and thereupon said maps and profiles were by said officers and by the Secretary of the Interior of the United States duly approved, all in conformity with the terms and provisions of the aforesaid act of Congress of the United States and pursuant to the regulations and requirements of the Secretary of the Interior of the United States; and that thereby the said Oregon Short Line and Utah Northern Railway Company claimed to have become fully possessed of the ownership of the said railway shown and indicated upon said maps and profiles between the eastern boundary of the State of Nevada and southwesterly boundary of the said State, and also upon said branch line from Clover Valley Junction to Pioche aforesaid and

1035 shown upon said maps and profiles of said railroad and as approved by the Secretary of the Interior of the United States.

That the right, title, and interest so acquired by the said Oregon Short Line and Utah Northern Railway Company had not been forfeited by the United States or by any act of Congress thereof, nor by any proceedings under the direction of Secretary of the Interior or by *quo warranto* nor any other proceeding whatsoever, nor in any way or manner; but the same was claimed as a valid subsisting vested right, title, and ownership in the said right of way, and the grade thereon constructed by said Oregon Short Line and Utah Northern Railway Company and its assigns.

That during the year 1890 the said Oregon Short Line and Utah Northern Railway Company entered upon the construction of its said line of railway from Milford, in the State of Utah, to the Nevada State line, and from said State line into and through Lincoln County, Nevada, including the said branch line from Clover Valley Junction to Pioche, and expended in constructing the road-bed and embankments, including bridges, tunnels, and work within and upon said right of way, in all about the sum of one million dollars, of which sum about six hundred and ninety thousand 1036 dollars was expended upon that portion of the right of way in Lincoln County, Nevada, in the construction of grade, embankments, cuts, tunnels, and work in and upon said right of way from Uvada aforesaid southwesterly along the main line of said railway to Clover Valley Junction, a distance of about forty miles, and from said last-named point northerly or northwesterly upon said branch line to or near the said town of Pioche, a distance of about thirty miles.

That in the year 1891, after expending said sums of money, the said Oregon Short Line and Utah Northern Railway Company became embarrassed financially and was unable to prosecute said work to completion, and for said reason suspended the prosecution of said work.

That all the properties of the Oregon Short Line and Utah Northern Railway Company, including the properties above mentioned and described, about August 1st, 1889, were mortgaged by the said Oregon Short Line and Utah Northern Railway Company to the American Loan and Trust Company of Boston.

That in the 1895 the said company, being in default in the payment of its indebtedness, secured by said mortgage and other mortgages upon its property, the American Loan and Trust Com- 1037 pany, trustee of the said consolidated mortgage, brought its bill to foreclose the same in the Circuit Courts of the United States; and thereafter in said suit such proceedings were had that a decree of foreclosure and sale was duly entered thereon, and the

said property embraced in the said mortgage was duly sold by proceedings under said decree of foreclosure and thereafter duly conveyed to the Oregon Short Line Railroad Company by the master under the terms and directions of said decree; and that in making execution and delivery of the conveyance of said properties the said Oregon Short Line and Utah Northern Railway Company duly joined, and the purchaser at said foreclosure sale was duly let into the possession thereof, under the terms of said decree of foreclosure and sale, on or about March 15th, 1897.

The said Oregon Short Line Railroad Company, the purchaser of the property of the said Oregon Short Line and Utah Northern Railway Company, was a corporation of the State of Utah, organized as such on the ninth day of February, 1897, and had power to acquire, own, operate, enjoy, maintain, and further extend all of the lines of the railroad right of way and property formerly owned and enjoyed by the said Oregon Short Line and Utah Northern Railway Company.

That in the year 1896, pending the foreclosure proceedings above mentioned, there was formed in the State of Utah a corporation known as the Utah and California Railway Company, which had power by its original articles of incorporation to construct, own, and operate a railroad from Salt Lake City, in the State of Utah, to St. George, in the State of Utah; and that by an amendment to the said articles the said company was empowered to construct a branch line from a point at or near Milford, Beaver County, Utah, a station on the Oregon Short Line and Utah Northern Railway Company, as then constructed, and continuing to the Utah-Nevada State line at a point now known as Uvada.

Said Utah and California company caused maps of its proposed railroad to be prepared and submitted to the proper land officers of the United States for its line of railroad, as shown upon said maps, extending from Milford station to Uvada, in the State of Utah, which said line of its railroad was identical with the constructed roadbed and right of way line of said Oregon Short Line and Utah Northern Railway Company; and

The said Utah and California company caused to be prepared maps and profiles of a proposed railroad line extending from the boundary line between the said States of Utah and Nevada from Uvada into and through Lincoln County, in the State of Nevada, for a distance of about forty miles, to a point known and called Clover Valley Junction; and also northerly from said point for a distance of about thirty miles to Pioche, which said maps and profiles were for a right of way identical with and laid upon the right of way and railroad grade and embankments and embraced in the maps and profiles and right of way of said Oregon Short Line and

Utah Northern Railway Company hereinbefore described; and it caused said maps and profiles covering the said line within the State of Nevada to be deposited with the said land office of the United States for the district of Nevada for approval by the Secretary of the Interior.

That none of the said maps and profiles so filed by the Utah and California Railway Company over the said line within the States of Utah and Nevada were ever approved by the Secretary of the Interior; and that no title to the said right of way shown upon such maps was ever acquired by the Utah and California Railway Company.

That the said articles of incorporation and corporation franchise of the said Utah and California Company did not at the time  
1040 aforesaid embrace any right, franchise, or power to construct, maintain, or operate a railroad for any distance whatsoever, or at all, within the State of Nevada.

And the said Utah and California Railway Company had not at the time of making and depositing its said maps and profiles upon the said line in the State of Nevada any right, franchise, or power whatsoever under which it could make, construct, or operate a railroad in the State of Nevada, nor under which it could, according to the laws of the said State of Nevada, acquire any right to construct, maintain, and operate a railroad in said State.

That in the year 1898 the Oregon Short Line Railroad Company made a certain agreement with one McCune and his associates providing that they should organize a company to be known as Utah and Pacific Railroad Company, to build, construct, maintain, and operate a railroad from Milford station, on the line of the said Oregon Short Line Railroad Company in Beaver County, Utah, to Uvada, on the Nevada State line.

In said agreement the Short Line Company reserved to itself the option to purchase and take over from said McCune and others the majority of the capital stock and securities of the said Utah and Pacific Company.

1041 That pursuant to said agreement a corporation of the State of Utah was organized by the name last aforesaid, and the line of the railroad from Milford to Uvada was by it constructed.

That the Utah and California Railway Company waived its pretended rights under its said filing of maps and profiles in favor of the said Utah and Pacific Railroad Company, and consented that the Utah and Pacific Railroad Company should construct, maintain, and operate its railroad upon said right of way; and

The said Oregon Short Line and Utah Northern Railway Company and said Oregon Short Line Railroad Company assigned and trans-

ferred their rights to said right of way and railroad grade between said points to said Utah and Pacific Railroad Company, and the said railroad of the Utah and Pacific Railroad Company was constructed and operated from Milford to Uvada aforesaid upon a right of way duly approved to it by the United States and identical with the original right of way approved by the United States to said Oregon Short Line and Utah Northern Railway Company.

That said Oregon Short Line Railroad Company acquired all the stock, bonds, and securities of said Utah and Pacific Railroad  
1042 Company and was possessed thereof and operated said railroad to Uvada as aforesaid.

That at the time said controversies arose the line of the railroad of the Oregon Short Line Railroad Company operated by it, including the said Utah and Pacific Company, extended from Salt Lake City, in the State of Utah, continuously to said Uvada, a distance of 297 miles, and at Uvada connected with the railway right of way formerly owned by the Oregon Short Line and Utah Northern Railway Company and extended into and through Lincoln County, Nevada, and it was engaged in collecting material for and in preparation for continuing the construction of a railroad upon the said line of right of way into and through Lincoln County, Nevada, including said branch line to Pioche.

On the second day of February, 1898, the Utah, Nevada and California Railroad Company was organized in and under the laws of the State of Nevada as an auxiliary company of the Oregon Short Line Railroad Company for the purpose of constructing a railroad from the eastern boundary of the State of Nevada, from a point near Uvada aforesaid, southwesterly across the State of Nevada to the southwestern boundary of said State, with a branch line extending  
1043 from a point on the aforesaid main line of railroad, called Clover Valley Junction, and about forty miles southwesterly from the said boundary line between the State of Utah and Nevada, and extending thence in a northerly and northwesterly direction a distance of about thirty miles to the town of Pioche, in Lincoln County, Nevada, and for the purpose of utilizing, using, and occupying the line of right of way and railroad grade of the said Oregon Short Line and Utah Northern Railway Company hereinbefore referred to, but to so occupy the same with the consent of the Oregon Short Line and Utah Northern Railway Company aforesaid, and its assignee, the Oregon Short Line Railroad Company.

That all of the capital stock of said Utah, Nevada and California Railroad Company was owned by said Oregon Short Line Railroad Company.

That after its organization the said Utah, Nevada and California Railroad Company duly adopted and located its line of railroad and

caused to be prepared maps and profiles of its said line of railroad showing the line thereof across the public lands of the United States from Uvada to Clover Valley Junction, a distance of about forty miles, the same being identical with the line of right of way of said

Oregon Short Line and Utah Northern Railway Company  
1044 hereinbefore referred to and caused its said maps and profiles,

together with copies of its articles of association and due proofs of its organization to be deposited in the proper land office in the State of Nevada under and as required by the regulations and requirements of the Department of the Interior prescribed under and by virtue of the act of Congress aforesaid; that by reason of the apparent conflict of location and claims of said several companies indicated in said several sets of maps the Department of the Interior required a hearing to be had before the said local land office in Carson City, Nevada, to determine the rights of said Utah, Nevada and California Railroad Company and of the Oregon Short Line and Utah Northern Railway Company and the said Utah and California Railway Company in respect to said location and right of way; that a hearing was had in said local land office pursuant to the direction of the Secretary of the Interior, but said local land office erroneously and wrongfully held that the grant to and right of way of the said Oregon Short Line and Utah Northern Railway Company under its said approved maps and location were forfeited because said line was not built within five years, and erroneously recommended that

the maps and location of the said Utah and California Rail-  
1045 way Company should be approved. Afterwards, on the

twenty-fourth day of April, 1901, the Land Commissioner of the General Land Office, having before him by proper proceedings the record and testimony and the findings and recommendations of the local land office, did correct said error made by the local land office and recommended to the Secretary of the Interior that the said maps and profiles of said Utah and California Railway Company be disapproved, and the maps and profiles and "due proofs" presented by the said Utah, Nevada and California Railroad Company were approved by the Secretary of the Interior of the United States on the twenty-fifth day of April, 1901.

That the said Utah and California Railway Company, after the filing of its said maps and due proofs as aforesaid, and on December 28th, 1900, at a meeting of its stockholders amended its articles of association so as to create a right, power, and franchise for it to build, construct, maintain, and operate a railroad in the State of Nevada, but did not file its said amended articles of association in the State of Nevada until the eighth day of April, 1901.

That about the first day of April, 1901, by reason of the failure of the Oregon Short Line Railroad Company to build and com-

1046 plete the said railroad within five years from the date of the approval of the said maps and profiles first filed by the Oregon Short Line and Utah Northern Railway Company as aforesaid, and because of the approval of the maps and profiles of the Utah and California Railway Company by the local land office, and because of refusal of the approval by the local land office of the maps, profiles, and due proofs theretofore filed by said Utah, Nevada and California Railroad Company, the said San Pedro, Los Angeles and Salt Lake Railroad Company, having at that time obtained the consent of the Utah and California Railway Company and control of said company by ownership of its stock, was advised that the said line of right of way was owned by it and lawfully appropriated by said Utah and California Railway Company and its assigns, undertook to enter upon the said right of way, grade, roadbed, tunnels, and improvements made and constructed as aforesaid, and to take hold and appropriate the same under its supposed rights under the Utah and California Railway Company and under its own charter, and that thereupon the Utah, Nevada and California Railroad Company being engaged in the construction of its line of railroad southwesterly from Uvada, a direct conflict arose between the agents and servants of the respective companies.

1047 That in order to quiet the same and to settle the rights and interests of the respective claimants to said right of way, a suit was brought in the Circuit Court of the United States for the District of Nevada by the Utah, Nevada and California Railroad Company against the Utah and California Railway Company; the Empire Construction Company, the San Pedro, Los Angeles and Salt Lake Railroad Company, C. O. Whittemore, T. E. Gibbon, J. Ross Clark, Adam Paul, Virgil Kelley, H. B. Maxson, in which suit the complainant alleged the facts hereinbefore set out; that in said suit the complainant therein, the Utah, Nevada & California Railroad Company afterwards filed a supplemental bill alleging that the Utah & California Railway Company had made some sort of contract or agreement whereby it conveyed or agreed to convey to the said San Pedro Company some right, title, estate, or interest in and to the said railroad grade and roadbed hereinbefore described. It also alleged in said supplemental bill the filing by it of maps, profiles, and due proofs for its branch line extending from Clover Valley Junction to the town of Pioche, in the State of Nevada; also the surveying and adoption of its line of railroad from Clover Valley Junction southwesterly across the State of Nevada to the western boundary thereof. and that it had caused maps and profiles of its line of right of way, as adopted by it for that part of its proposed line southwesterly from Clover Valley Junction across the State of Nevada to the western boundary of said State, to be sub-

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mitted to the Secretary of the Interior for his approval; that it had duly adopted the line of right of way described upon and embraced in said maps by due corporate action by its board of directors, and that it had continuously prosecuted the work of construction of its railroad upon the line of railroad right of way indicated and shown upon its said several maps and profiles, and that it then had in operation twenty-three miles of railroad in and upon its said main line of right of way from the Utah-Nevada State line in the direction and towards Clover Valley Junction aforesaid, and that it had on hand track material and was actively and earnestly prosecuting the work of construction of said line of railroad through Clover Valley Junction and toward the western boundary of the State. It alleged the entry upon its line of railroad by the said San Pedro, Los Angeles and Salt Lake Railroad Company and the attempted location of a right of way for the benefit of the said San Pedro, Los Angeles and Salt Lake Railroad Company, and alleged its claim to right  
1049 and title to the entire line of right of way and the interference therewith from Uvada westward by the agents and servants of the said San Pedro, Los Angeles and Salt Lake Railroad Company, and alleged and claimed title to the whole of the said line of right of way, and prayed that the claim of right and title asserted by the said San Pedro, Los Angeles and Salt Lake Railroad Company thereto be quieted and its possession and right of possession be confirmed to it.

That in said suit answers were filed by the defendants in said suit, including the said San Pedro, Los Angeles and Salt Lake Railroad Company, and that a temporary injunction was issued and allowed under the said original bill.

In said suit the said San Pedro, Los Angeles and Salt Lake Railroad Company filed its answer and cross bill to the said original and said amended and supplemental bills, and denied either upon information or directly the allegations thereof, and claimed that it had the right to enter in and upon and to appropriate all the premises claimed by the complainant in said suit, and by way of cross complaint in said proceedings alleged and set out its claim to all of that part of the line of right of way for a railroad commencing  
1050 at Clover Valley Junction, extending thence in a southwesterly direction through the Meadow Valley Wash to the Nevada-

California State line, a distance of about one hundred and seventy-five miles, and alleged the adoption by it of its line of right of way for its railroad, the filing by it of copies of its articles of association, due proofs, maps, and profiles, as required by the laws of the United States; denied the said complainant's adoption, location, or filing of maps and profiles as to different portions of said line, and attacked the method of survey, location, and adoption of



route which had been made by the complainant, and charged that the said complainant's supposed line was not validly made, adopted, located, or proven; that on June 10th, 1901, it had commenced at Salt Lake City the survey and location of a part of its line from Salt Lake City by the most feasible and direct route through said State of Utah and into the State of Nevada to a point of connection with its said line of railroad surveyed, located, and adopted in the State of Nevada, and then had about eighty miles of said line surveyed and adopted; alleged that it had entered upon and taken possession of all of the railroad right of way from Clover Valley Junction to the Nevada-California State line, and that on May 6th it commenced the work of construction of its railroad upon said 1051 line, and that at a point about twenty-six miles southwesterly from Clover Valley Junction it had entered upon and commenced construction of its railroad line upon said disputed right of way, and alleged its purpose to continue to use and occupy said disputed right of way as the location for its line of railroad; that it was then engaged in surveying and locating a line for its railroad from the city of Los Angeles, in the State of California, to the Nevada-California State line; that it then had acquired and had in operation its railroad from San Pedro to the city of Los Angeles, a distance of 27 miles, and had acquired a system of railroads in the city of Los Angeles and extending into the surrounding country, consisting of three branch lines of standard-gauge railroad, aggregating in all about eighty miles of track; that it had expended in addition to the amount expended in acquiring the Los Angeles Terminal Railway's property, about five hundred thousand dollars; that it purchased rails for sixty miles of track, a large number of ties, was rebuilding its railroad between San Pedro Harbor and Los Angeles; that it had purchased from private owners nearly all the right of way for the first sixty miles of its railroad easterly from Los Angeles, and was engaged in securing the remainder right of 1052 way, and that it proposed to continue the same; that when the right of way was secured contracts for the grading of the first sixty miles of its line would at once be let and the railroad constructed thereon. It recited the purchase of equipment and preparations for construction; alleged that the complainant on July 29th had entered at Clover Valley Junction upon the said disputed right of way formerly owned by the Oregon Short Line and Utah Northern Railway Company, and forcibly took possession thereof and threatened to proceed along the said disputed right of way in the construction of its own railroad. By said cross bill the said San Pedro, Los Angeles and Salt Lake Railroad Company prayed, amongst other things, for the settlement of the title to the disputed

right of way, and that the complainant in said suit and all persons under them be enjoined from interfering with or occupying the said disputed right of way, and that the title thereof be declared to be in the said San Pedro, Los Angeles and Salt Lake Railroad Company, and that the title of the complainant, the Utah, Nevada and California Railroad Company, be quieted in the said San Pedro, Los Angeles and Salt Lake Railroad Company, and for relief by which the complainant would be excluded from any further right, title, or claim therein.

1053 The case was heard upon the issues as made up under the original bill, the supplemental bill, the cross bill, and the respective motions for injunction before the Honorable Thomas P. Hawley, judge of the said United States Circuit Court, on the 22d day of July, 1901, and the said complainants in the said original bill were granted an injunction restraining the Utah and California Railway Company and the San Pedro, Los Angeles and Salt Lake Railroad Company from interference with the line of right of way and railroad roadbed and grade from Uvada to Clover Valley Junction and thence to Pioche, and the court denied the prayer of the complainant for an injunction *pendente lite*, under its amended and supplemental bill, as to that portion of the line of right of way for a railroad southwesterly from Clover Valley Junction, and as the respective claims of the parties in respect thereto were yet pending before the Land Department of the United States left the decision of questions as to such rights to be further considered after the completion of the respective hearings in said Land Department of the United States.

That the complainant in said suit, the Utah, Nevada and California Railroad Company, completed its line of railroad to Clover  
1054 Valley Junction on or about the first day of August, 1901, and there was in operation by it and the Oregon Short Line Railroad Company at that time southwardly from Salt Lake by direct line about three hundred and twenty-four miles of railroad.

These defendants allege that after the said decision of the United States court for the district of Nevada the complainant in said suit and the said San Pedro, Los Angeles and Salt Lake Railroad Company each, by their separate corps of surveyors, surveyed and studied the country known as the Meadow Valley Wash, the then only known practicable route for a railroad southwesterly from Caliente, Nevada, for a distance of about one hundred and twenty-five miles, and which consists of a canyon carrying a mountain stream, the difficulties of railroad construction through which for even one line of railroad are from a physical standpoint very great, and thence across the desert to a junction with the line of railroad of the Atchison, Topeka and

Santa Fe Railway Company; that along the entire line of railroad through said Meadow Valley Wash and to a junction with the railroad of the Santa Fe Company there were almost no agricultural, live-stock, or mining interests or development, practically no local settlement, either actual or prospective, and the line of railroad between said points was through a canyon or a desert without any substantial showing for even a prospective local business.

These defendants deny that they or either of them were at any time or in any manner or for any reason whatever induced to or did desist from and abandon their proposed intention of building a line of railroad such as was described and defined in the articles of association of the said San Pedro, Los Angeles and Salt Lake Railroad Company. They deny that the said Harriman and his associates and the said Oregon Short Line Railroad Company, on the one part, and defendant Clark and his associates upon the other part, then or at any time, combined and confederated together to suppress any competition either actual or proposed. They deny that the said Clark and his associates, upon the one part, or the said Harriman and his associates and the said Oregon Short Line Railroad Company then or at any time made or entered into any contract, agreement, or combination to in any manner maintain, continue, or extend the, or any, alleged restraint of trade mentioned in complainant's bill, or to maintain, continue, or extend any or the alleged monopoly. They deny that the said William A. Clark joined in the alleged or any conspiracy to suppress competition in any or all of the territory set forth or described in the complainant's bill, and deny that in pursuance of such alleged or any unlawful alliance with said, or any of said, alleged conspirators the said Clark entered into a certain agreement with the defendant Harriman under date of July 9th, 1902. They admit that the defendant Clark and the said Harriman did make a certain agreement, dated July 9th, 1902, and they admit that a copy thereof is annexed to the said complainant's bill, marked "Exhibit A." These defendants allege and aver that there was not at the time of the making of said agreement any continuous line of railroad extending from Salt Lake City in Utah to San Pedro via Los Angeles. They allege the truth to be that the only railroad constructed at that time was the railroad owned by the Oregon Short Line Railroad Company and its auxiliary company, the Utah, Nevada and California Railroad Company, which extended southerly from Salt Lake by direct line for a distance of about three hundred and twenty-four miles; that the said Short Line Company also owned and operated other branch lines of railroad south of Salt Lake City, including a cut-off then being constructed and known as the Leam-

ington Cut-off, extending southerly from Salt Lake City through Stockton to Leamington Junction for a distance of about 200 1057 miles, making in all a constructed line of railroad and branch lines owned and operated by the said Short Line Company south of Salt Lake City, of about 525 miles; that the said San Pedro, Los Angeles and Salt Lake Railroad Company at that time owned in southern California a line of railroad with branches aggregating about eighty miles of constructed road, and was engaged in securing rights of way for the construction of its line of railroad and in constructing a road thereon from Los Angeles to Riverside, and that the amount of railroad thus under construction amounted to about sixty miles. It also claimed to have located a line for a right of way across Government land extending from Caliente to a junction with the Atchison, Topeka and Santa Fe Railway Company's line of railroad for about 300 miles, the title to which was in dispute.

These defendants allege and aver that the said San Pedro, Los Angeles and Salt Lake Railroad Company had not acquired nor located its line of railroad between said junction with the Santa Fe Railroad tracks and San Bernardino and Riverside, California. That the route from Daggett, the junction point with the Santa Fe Railroad aforesaid, passed over a range of mountains over the Cajon Pass for a distance of about eighty miles, which called for the 1058 crossing of a mountain of steep grades and which required very heavy, expensive construction work, and it had not acquired any right of way nor made any certain and definite plans for the construction of its line of road from San Bernardino to Riverside, California, nor yet between said Riverside and the said junction of the Santa Fe Railroad aforesaid.

The said San Pedro, Los Angeles and Salt Lake Railroad Company had failed to secure to itself the right and title to the line of right of way for a railroad, including the roadbed built thereon originally by the Oregon Short Line and Utah Northern Railway Company, and the right to the location of its entire line of railroad from Caliente southwesterly to a junction with the Santa Fe tracks as aforesaid, was in dispute in the Land Department of the United States; and the said San Pedro, Los Angeles and Salt Lake Railroad Company was advised that its right to recover in said proceedings was in grave doubt.

The premises and nature of the country considered, it had become apparent to the said San Pedro, Los Angeles and Salt Lake Railroad Company that for the entire distance from Caliente to a junction with the line of railroad of the Atchison, Topeka and Santa 1059 Fe Railway there was not then and apparently never could be any considerable or profitable amount of local business, and

that the line of railroad from Caliente northward existed in a country which promised much valuable local business between Salt Lake and Caliente; that the line of railroad owned and then being constructed by the said San Pedro, Los Angeles and Salt Lake Railroad Company in California promised a lucrative business locally in southern California, and that if said California line was connected with the lines of railroad extending from Caliente northerly to Salt Lake and to connections with railroads existing at Salt Lake and extending eastwardly to the Missouri River, namely, the Oregon Short Line and its connection, the Union Pacific Railroad, the Denver and Rio Grande Railroad and its connections to the Missouri River, a line of railroad constituting a new through transportation line from the Missouri River through Salt Lake to Los Angeles could successfully and with some reasonable chance for profit be constructed, maintained, and operated, and that the construction, maintenance, and operation of two such lines of railroad from southern California to Salt Lake would be unprofitable and nonremunerative to both of such lines.

That upon the consideration of the circumstances and conditions above recited, the contract and agreement of July 9, 1902, was made, executed, and entered into, and these defendants allege that the said contract and agreement did not create any combination, confederacy, or conspiracy with the intention of or with the effect of suppressing competition, and was not made with the intention of restraining trade and did not have the effect of restraining trade, and was not intended to create or provide for a monopoly and did not cause or create any monopoly whatever.

And these defendants admit and aver that after the making of said contract of July 9th, 1902, and pursuant thereto, the Oregon Short Line Railroad Company and its auxiliary companies made, executed, and delivered to the said San Pedro, Los Angeles and Salt Lake Railroad Company deeds and conveyances conveying to it those certain lines of railroad then commonly known as the Garfield Branch, the Leamington Cut-off, the lines of railroad of the Oregon Short Line Railroad Company lying south of Sandy to Milford, including the branch line to Frisco, the so-called Tintic branches, the line of the Utah and Pacific Railroad Company extending from Milford to Uvada, the constructed line of railroad of the Utah Nevada and California Railroad Company extending from Uvada to Caliente, Nevada, the partially completed roadbed constructed upon the right of way for a railroad from Caliente to Pioche, Nevada, and assigned and caused to be assigned and conveyed to said San Pedro, Los Angeles and Salt Lake Railroad Company all of the right, title, and interest of the said Oregon Short Line Railroad Company and of the Utah, Nevada and California

Railroad Company in and to the located line for a right of way for a railroad extending from Caliente southerly and southwesterly through the Meadow Valley Wash to the Nevada-California State line, and also sold and delivered to the San Pedro, Los Angeles and Salt Lake Railroad Company a large amount of equipment and railroad material situated upon and along the said lines of constructed railroad above mentioned from Salt Lake City and from Sandy southerly to Caliente, embracing in all 523 miles of constructed and completed railroad and the franchises thereof.

These defendants also admit and aver that pursuant to said agreement the Oregon Short Line Railroad Company granted to the said San Pedro, Los Angeles and Salt Lake Railroad Company joint and equal use of the yards and terminal facilities of the Oregon Short Line Railroad Company at Salt Lake City.

1062 These defendants also admit and aver that upon the application of said San Pedro, Los Angeles and Salt Lake Railroad Company to the Southern Pacific Company the said Southern Pacific Company granted to it the right to use jointly and equally with the Southern Pacific Company certain railroad tracks of the Southern Pacific Company extending from Riverside Junction to Colton and thence to San Bernardino, in southern California, which were secured to the said San Pedro, Los Angeles and Salt Lake Railroad Company by virtue of a definite lease embracing the tracks lastly above mentioned, and specifying the terms and conditions for the operation thereof.

These defendants further admit that upon the application of said San Pedro, Los Angeles and Salt Lake Railroad Company to the Atchison, Topeka and Santa Fe Railway Company, and upon negotiations between said San Pedro Company and the said Santa Fe Company, the said Santa Fe Company granted to said San Pedro, Los Angeles and Salt Lake Railroad Company the right to the joint use and occupation of certain of the tracks of the said Santa Fe Company extending from Colton, in California, through San Bernardino, and through Barstow to Daggett, for a term of years,  
1063 to a point upon the line of the said Santa Fe Company, a distance of about 91 miles; and that the tracks obtained by said two leasehold interests from the Santa Fe Company and the said Southern Pacific Company, respectively, are now and after the dates of said respective leases were used by the said San Pedro, Los Angeles and Salt Lake Railroad Company as a part of its new through line of railroad from San Pedro to Salt Lake City.

That because of the making and by carrying out the said several agreements hereinbefore referred to the defendant The San Pedro, Los Angeles and Salt Lake Railroad Company, was enabled to com-

plete and open for use its said line of railroad from Salt Lake City to San Pedro via Los Angeles on the first day of May, 1905, and that otherwise it would have been unable to complete and open its said line of railroad between said points for two or three years thereafter.

That at the time of the making of said agreements upwards of 400 miles of difficult and expensive construction work remained to be done to connect the lines of railroad of the San Pedro, Los Angeles and Salt Lake Railroad Company and those of the Oregon Short Line Railroad Company, Utah, Nevada and California Railroad

Company at Caliente, Nevada, and there could not for several 1964 years have been any competition of any kind between the parties to said agreement for the transportation of commerce, and the possibility or probability of any such competition and of any restraint or restriction thereon was too remote or contingent to be prohibited by or to come within the provisions of said act of Congress approved July 2, 1890.

These defendants deny that for the purpose of maintaining, extending, and preserving the or any alleged restraint of trade and commerce among the States and with foreign nations, or monopolizing the same and destroying competition with relation thereto, or for any other unlawful or illegal purpose, or to any unlawful effect, said San Pedro, Los Angeles and Salt Lake Railroad Company made certain or any traffic arrangements or contracts with either the said Harriman, Schiff, Kahn, Stillman, Union Pacific Railroad Company, Oregon Short Line Railroad Company, the defendant Clark and his associates or other persons, but these defendants admit and aver that said San Pedro, Los Angeles and Salt Lake Railroad Company did make a certain agreement with the Southern Pacific Company, under date of June 18th, 1903, which is the same agreement referred to in complainants' bill.

These defendants allege and aver that the only tariffs 1065 and rates of the Southern Pacific Company, which by the terms of said contract the said San Pedro, Los Angeles and Salt Lake Railroad Company was to adopt were the rates and tariffs of the Southern Pacific Company in respect of local southern California intrastate business as to that part of the lines of said San Pedro, Los Angeles and Salt Lake Railroad Company which extended from San Pedro through Los Angeles to Pasadena, and as to that portion of the new line then under construction by said San Pedro, Los Angeles and Salt Lake Railroad Company which extended easterly from Los Angeles toward Riverside, California, of which no more than thirty miles had at that time been constructed. These defendants aver that the Southern Pacific Company at the time of making said

contract and for many years prior thereto had owned and exclusively operated a line of railroad from San Pedro to Los Angeles; that it also owned a line from Los Angeles to Pasadena, and that its main line also extended eastwardly from Los Angeles through Pomona, Ontario, and Riverside, California, and thence to its eastern terminus; and these defendants aver and allege that on the 15th day of April, 1907, long prior to the commencement of this suit, the said agreement between said San Pedro, Los Angeles and Salt Lake Railroad Company and said Southern Pacific Company was by due corporate action by both of these said companies abrogated and canceled.

These defendants, further answering, admit and aver that pursuant to said contract of July 9th, 1902, certain contracts and agreements were made between said San Pedro, Los Angeles and Salt Lake Railroad Company and the said Oregon Short Line Railroad Company, and which are the same agreements referred to by complainant in Paragraph VI of its said bill.

And these defendants admit that in one of said contracts it was, among other things, provided that the San Pedro, Los Angeles and Salt Lake Railroad Company would not for the term of ninety-nine years build or assist in building any lines of railroad which might run northwardly of the parallel of Salt Lake City, Utah, and that the Oregon Short Line Railroad Company would not construct any lines of railroad southwardly of the parallel of Salt Lake City, Utah, except by common consent; but these defendants deny that the purpose of said agreement was to maintain, extend, and preserve the, or any, restraint of trade or commerce among the States or with foreign nations, or of monopolizing the same and destroying competition with relation thereto, as alleged in said bill, or in

1067 pursuance of any conspiracy in said bill alleged, and that it was competent and proper for these defendants to enter into such arrangements with the Oregon Short Line Railroad Company for the reason, among others, that the San Pedro, Los Angeles and Salt Lake Railroad Company had no corporate power under its said articles of incorporation to construct or build any railroads whatever northward from Salt Lake City, Utah; and that the Oregon Short Line Railroad Company, after selling its said railroads and franchises therefor southward from Sandy and from Salt Lake City, retained no corporate power to build, construct, maintain, or operate railroads south of said Sandy or Salt Lake City, as above mentioned.

Answering further, these defendants allege and aver that pursuant to and in carrying out the said contract of July 9, 1902, certain other contracts or agreements referred to in the complainant's bill



were made between the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and said San Pedro, Los Angeles and Salt Lake Railroad Company, providing the terms and conditions upon which traffic might be interchanged between the said companies and providing for the operation of a through line for the carriage of freight and passengers by through cars, 1068 through trains, and direct connections; and that, amongst other things, upon the conditions in said contract recited, there was reserved to the Union Pacific Railroad Company and to the Oregon Short Line Railroad Company the right to make and establish certain through rates on certain joint business between points reached over the line of said Union Pacific Railroad Company and the Oregon Short Line Railroad Company and points in Utah upon the lines of railroad of the San Pedro, Los Angeles and Salt Lake Railroad Company; but these defendants deny that the effect or purpose of said contract and its several provisions was for the purpose of maintaining, extending, and preserving the, or any, restraint of trade or commerce among the States or with foreign nations, or monopolizing the same or destroying any competition with relation thereto. For a full statement of all the terms and conditions of said contract reference is made hereby to said contract, which is dated the 18th day of June, 1903, and which will be exhibited to the court herein in due course; and these defendants deny that the San Pedro, Los Angeles and Salt Lake Railroad Company thereby in any way or manner or to any extent surrender the control of said company or the management of its affairs or the control and 1069 management of its said railroad and properties to the said Harriman and his associates, or to the said Union Pacific Railroad Company, or to the said Oregon Short Line Railroad Company, or any or either of them.

These defendants admit that there was issued of the capital stock of said San Pedro, Los Angeles and Salt Lake Railroad Company twenty-five million dollars in par value, and that one-half of the same was issued to and for the defendant Clark and his associates and that one-half thereof was issued to said Edward H. Harriman as trustee, and that the said capital stock of said company was issued to said parties and by them transferred to and deposited with the Farmers' Loan and Trust Company, a corporation of the State of New York, as trustee under an agreement, a copy of which is annexed to complainant's bill, marked "Exhibit B," and made a part thereof.

These defendants deny that each and all or any of the several acts in Paragraph VI of complainant's bill alleged against these defendants were done in whole or in part or in any manner whatever

pursuant to the alleged original conspiracy or to any conspiracy whatever to suppress competition or to procure a monopoly of the transportation business throughout the territory in said bill 1070 described, or in any other territory whatever, and deny that any conspiracy for any of said purposes or for any illegal or unlawful purpose existed, or that these defendants in any way or manner at any time joined in the making or maintaining of any conspiracy or the doing of any unlawful act or thing, or that they or either of them in any way or manner at any time united in connection with other persons or corporations in the purpose of accomplishing of any illegal or unlawful design, and deny that the said San Pedro, Los Angeles and Salt Lake Railroad Company was in any way or manner party to any conspiracy, combination, or confederacy forbidden by law or in restraint of trade or for the purpose of creating any combination, monopoly, or unlawful confederation or conspiracy.

These defendants deny that in pursuance of said alleged or any combination, confederation, or conspiracy, or that in fact or in any way or manner the lines of railroad owned and operated by the said San Pedro, Los Angeles and Salt Lake Railroad Company are in all or any respect managed or controlled by the said alleged or any conspirators or by any person or persons other than its own proper officers and agents, and these defendants deny that there is not now and that there has not been at all times direct, positive, 1071 and active competition between the railroad of said San Pedro, Los Angeles and Salt Lake Railroad Company and the railroad and lines of the Southern Pacific Company or of any other line of railway controlled by said Union Pacific Railroad Company and said Harriman and his associates, as in said bill alleged.

They deny that the aforesaid act of Congress, approved July 2, 1890, or any other law of the United States, was intended to or could constitutionally prohibit the making or carrying out of such agreements and contracts, or any of them, and aver that the construction of railroads in the States of Utah, Nevada, and California by the corporations of said States, respectively, or by corporations of other States authorized by the said States to exercise their corporate powers therein and all agreements relating to the construction or abandonment of the construction of such railroads are matters wholly to be dealt with by the laws of the said States, respectively, and any law of Congress intended or construed to prohibit or regulate or in any manner interfere with such contracts, corporate powers, and matters is in excess of the powers of Congress under the Constitution of the United States and therefore void.

They aver that the said contract, "Exhibit A" to the petition, was made and entered into on July 2, 1902, and that each and every contract thereafter made and entered into in carrying out and pursuant to the provisions of the same was made and entered into and was fully executed during the months of June and July, 1903; and not afterwards; and these defendants aver that by reason of the premises the right to maintain this suit and all right of action or prosecution by the Government of the United States for or on account of said contract or for or on account of any of the matters and things alleged in Subdivision VI of the petition accrued, if at all, more than three years and more than five years next before the commencement of this suit and is therefore barred by the laws of the United States, and all right of the petitioner to relief herein is barred by the said statute and by the laches and acquiescence of the petitioner.

VII. For answer to the seventh paragraph of complainant's bill these defendants say that they have no knowledge, information, or belief in respect of the said several matters in said Paragraph VII alleged, except the statements and allegations of the complaint itself as contained in said paragraph, wherefore these defendants neither admit nor deny the said several allegations, but leave the complainant to make its proofs therein as it may be advised.

VIII. All these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for these defendants to make answer unto and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of these defendants, all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD CO.,

By W. A. CLARK, *President*.

Attest:

J. H. ANDERSON,

*Assistant Secretary.*

W. R. KELLY,

*Solicitor and Counsel.*

1074 In the Circuit Court of the United States for the District of Utah. In equity. No. 993.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harri- man, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

The separate answer of the defendant The Farmers' Loan and Trust Company to the original petition of the United States of America. (Filed April 6, 1908.)

1075 United States Circuit Court, District of Utah. No. 993. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harri- man, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

1076 The separate answer of the defendant, the Farmers' Loan and Trust Company, to the original petition of the United States of America.

This defendant now and at all times hereafter saving to itself all manner of benefit and advantage of exception which can or may be taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

I. As to all the matters alleged in Subdivisions I, II, III, IV, and V of the said petition this defendant is not informed save by said petition, and it leaves the complainant to make such proof thereof as

it may be advised; except that it is informed and believes that the defendants mentioned in Subdivision I of said petition were at the times alleged in said petition, and are now, common carriers employed in the transportation of freight and passengers within and among those States and Territories of the United States in and through which the transportation lines owned by them, respectively, are located, and not further or otherwise, but were and are to 1077 that extent engaged in trade and commerce among the several States and with foreign countries; and except that as to all provisions of statutes of the United States and decisions of courts of the United States purporting to be quoted or set forth in said subdivisions of said petition this defendant begs leave to refer to such statutes and decisions themselves for the contents and provisions thereof.

II. This defendant admits that on or about the 7th day of June, 1903, a contract in writing bearing date on that day was made and entered into between this defendant and William A. Clark, individually and as trustee for his associates and Edward H. Harriman, as trustee, as therein stated, of which contract "Exhibit B" annexed to said petition and referred to in Subdivision VI thereof is a true copy and to which for the terms and provisions thereof this defendant begs leave to refer as fully as if the same were herein at length set forth; and this defendant admits that the stock of the defendant San Pedro, Los Angeles & Salt Lake Railroad Company was deposited with and is still held and voted by this defendant in the manner, for the purpose, and as stipulated and provided in and by said contract "Exhibit B." This defendant denies that the making 1078 of said contract "Exhibit B" or the acts done thereunder were done pursuant to any conspiracy to suppress competition or procure a monopoly of the transportation business throughout the territory in said petition described or otherwise, and upon information and belief denies each and every allegation of a conspiracy or combination contained in Subdivision VI of said petition for any of the objects or purposes therein mentioned or for any other purpose; and upon information and belief this defendant denies that the matters alleged in Subdivision VI of said petition or any of them have been suppressed, restrained, or in any manner restricted commerce among the several States or with foreign nations. This defendant admits upon information and belief that on or about the 9th day of July, 1902, the defendants William A. Clark and Edward H. Harriman entered into and executed an agreement in writing and that "Exhibit A" to the petition is a true copy of such agreement. Except as in this paragraph expressly admitted or denied, this defendant

is not informed save by said petition as to the matters alleged in Subdivision VI thereof, and it leaves the complainant to make such proof thereof as it may be advised.

III. This defendant denies that the act of Congress approved July 2nd, 1890, referred to in the said petition, or any other law of the United States, was intended to or could constitutionally prohibit the making or carrying out of such agreement or contract "Exhibit B," or of said other agreement or contract annexed as "Exhibit A" to said petition and referred to in Subdivision VI thereof, and avers that the construction of railroads in the States of Utah, Nevada, and California by individuals or by the corporations of said States, respectively, or by corporations of other States authorized by the said States to exercise their corporate powers therein, and all agreements relating to the construction or the abandonment of the construction of such railroads, are matters wholly to be dealt with by the laws of the said States, respectively; and any act of Congress intended or construed to prohibit or regulate or in any manner interfere with such contracts, corporate powers, and matters is in excess of the powers of Congress under the Constitution of the United States, and therefore void.

IV. This defendant avers that the said contract "Exhibit B" to the petition was made and entered into on June 7th, 1903; it avers on information and belief that the said "Exhibit A" to the petition was made and entered into on July 2nd, 1902. This defendant 1079 avers that by reason of the premises the right to maintain this suit and all right of action or prosecution by the Government of the United States for or on account of any of the matters and things alleged in Subdivision VI of the petition accrued, if at all, more than three years and more than five years next before the commencement of this suit, and is, therefore, barred by the Revised Statutes of the United States, in such cases made and provided, and all right of the complainant to relief herein is barred by the said statutes and by the laches and acquiescence of the complainant.

V. As to all the matters alleged in Subdivision VII of the said petition this defendant is not informed save by said petition, and it leaves the complainant to make such proof thereof as it may be advised; except that it admits that the stock of the Northwestern Pacific Railroad Company is controlled equally by the defendants Southern Pacific Company and The Atchison, Topeka & Santa Fe Railway Company; and upon information and belief this defendant avers that said Northwestern Pacific Railroad Company is a corporation duly organized under the laws of the State of California and

that its lines of railroad are situated wholly within the State of California.

1081 VI. This defendant is advised and therefore avers that the cause of action, if any, stated in Subdivisions I to V of said petition, and the cause of action, if any, stated in Subdivision VI thereof, and the cause of action, if any, stated in Subdivision VII thereof, are wholly separate and distinct from one another, and that if either of said alleged causes of action constitutes a violation of the said act of Congress approved July 2nd, 1890, or of any other law of the United States, such violation was and is altogether distinct from any violation of said laws alleged as constituting such other causes of action, and the said alleged causes of action were improperly united in said petition. This defendant avers that the matters set forth in said petition as constituting each of said alleged causes of action are wholly irrelevant to the said other alleged causes of action.

VII. And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is or may be charged by the said petition, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided  
1082 or denied, the same is not true to the knowledge and belief of this defendant; all of which matters and things this defendant is ready and willing to offer, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

[SEAL.]

THE FARMERS' LOAN AND TRUST COMPANY,  
By E. S. MARSTON, *President*.

Attest:

A. V. HEELY, *Secretary*.

TURNER, ROLSTON & HORAN,

P. L. WILLIAMS,

*Solicitors for Defendant, The Farmers'*

*Loan and Trust Company.*

P. L. WILLIAMS,

JAMES F. HORAN,

*Of Counsel.*

1083 In the United States Circuit Court, District of Utah.

The United States of America, complainant, versus the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, the Atchison, Topeka & Santa Fe Railroad Company, the Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harri-man, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

The answer of Henry C. Frick to the bill of complaint of the United States of America.

D. T. Watson, attorney for defendant. (Filed April 6, 1908.)

1084 In the United States Circuit Court, District of Utah.

The United States of America, complainant, versus the Union Pacific Railroad Company, the Oregon Short Line Railroad, the Oregon Railroad & Navigation Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, the Atchison, Topeka & Santa Fe Railroad Company, the Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harri-man, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

The answer of Henry C. Frick to the bill of complaint of the United States of America.

*To the honorable the judges of the said court:*

This defendant, protesting and objecting that he was not, when the petition was filed, nor has he since been, nor is he now a resident of the district of Utah, and that this court has not, as to him, juris-diction of the matters and things charged in the petition, and

1085 saving unto himself all manner of benefits and advantages by way of exception or otherwise which may or can be taken to the many irregularities, errors and mistakes, imperfections and uncer-tainties in the bill of complaint or petition contained, for answer to said bill of complaint or petition, or to so much as he is advised it is necessary or material for him to make answer to, answering, says:

I deny all the allegations of the petition that at any time or in any way I was a member of any group or combination of persons



which controlled, or sought to control, the Union Pacific Railroad Company or the Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway Company, or any other railroad company named in the petition, and I deny that I ever entered into any conspiracy or aided or abetted any conspiracy which had for its object the restraint of trade and commerce among the several States or between the said States and foreign countries as carried on by the Union Pacific Railroad Company and the Southern Pacific Company, or the system of either, or by any other lines of railroads or steamships as named in the petition, and I deny that in any way I ever entered into any combination or conspiracy or aided or abetted any  
1086 combination or conspiracy to unlawfully deprive the public of the facilities and advantages in the carrying on of interstate and foreign trade and commerce theretofore enjoyed through the independent competition of the railway systems and steamship lines named in the petition, or that I ever was a member of any combination or conspiracy whose object was to effect a virtual or substantial combination of the Union Pacific Railroad Company and any other transcontinental railway company or companies or steamship line or lines, or whose object or purpose was to place restraint on any or all competitive interstate and foreign trade and commerce, or to monopolize or attempt to monopolize the same or to suppress competition in the same as averred in the petition, or that I ever in any way was a party to or aided or abetted any such combination or conspiracy.

I never knowingly violated the provisions of an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and I am not guilty of any of the acts, matters, or things charged in the petition which are in alleged violation of said act of Congress.

The facts, so far as I am concerned, touching the matters alleged in the petition are as follows:

1087 I am now, and for a number of years I have been, an investor in the capital stock of the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railway Company, but these stocks I have bought with my own means as my own individual investments, and without cooperation on the part of any other person. I bought them because I believed the investments to be good ones; not only that, they were, when I bought, fairly worth the price I paid for them, but I believed in the future prospects of each one of said railroad companies, and I bought with such belief as one of the prominent reasons for my investment.

I am now, and I always have been, a great believer in the future of our country, and especially of the future of the West and the

Pacific slope, and when I bought I then looked, as I now do look, forward to a large increase in the value of the said stocks legitimately arising from the intrastate and interstate trade and traffic which I think is certain, in the ensuing years, to develop and to demand transportation over these different lines of railroad.

I never have believed, nor do I now believe, in the restriction of competition in interstate and foreign traffic as a policy of the 1088 railroad system in a country as undeveloped as in the West and to the Pacific Ocean. Neither of the systems named in the petition, either the Union Pacific, or the Southern Pacific, or the Atchison, Topeka & Santa Fe, or any other of the existing systems, or all of them combined, will, as I believe, in the near future, be much more than able to efficiently handle the trade and traffic which will seek their lines, and I feel certain that each one of these systems will have all the business that each can handle.

In my purchases of these stocks I had no idea of the formation of a monopoly which could hope to control the present, let alone the future, vast traffic east and west to and from the Pacific slope, and certainly I never designed any such amalgamation or combination of railroads as is charged in the petition, and I never directly or indirectly was a party to or an abettor or aider of any such scheme as is therein outlined.

I was elected a member of the board of directors of the Union Pacific Railroad Company in the month of October, 1904, and I have ever since been a member of said board. I deny that since I became a director of said railroad company the Union Pacific Railroad Com-  
pany became a party to or has carried out any such combina-  
1089 tion or conspiracy as is alleged in the petition, or was a party to an attempt to restrict interstate trade or traffic.

It is true that, as in all large corporations where almost daily questions are arising which demand prompt answers, an executive committee was created long before I became a member of its board of directors, which executive committee I regard as necessary to the efficient management of the company, and the actions of that executive committee have been and are now always subject to the control of the board of directors as well as to the stockholders.

I deny the averments in the petition—

“That during all the times above mentioned, by by-laws of said company to that end enacted, the directors of said corporation have delegated their power to manage and direct the business and affairs of the said company to an executive committee of five members, to act in such manner as such committee should deem best for the company's interests in all cases in which specific directions shall not have been given by the board.”

"And it is and has been also provided by said by-laws that the chairman of said executive committee is authorized to represent that committee when it is not in session."

The by-law which relates to such matters is as follows:

"SECTION 12. The directors shall elect from their number an executive committee of five members. Such committee shall hold office until the next annual election of directors, and shall, when the board of directors is not in session, have all the powers of the board of directors to manage and direct all the business and affairs of the company in such manner as said committee shall deem best for the company's interests in all cases in which specific directions shall not have been given by the board of directors. The chairman of the executive committee shall be elected by the board of directors, and, subject to the control and approval of the executive committee, shall represent it when not in session. He shall from time to time report to the executive committee. Any vacancy which may occur in said committee shall be filled by the board of directors. Regular meetings of said executive committee shall be held at such times and at such places in the city and State of New York or elsewhere as the committee shall from time to time determine. Special meetings may be called at any time by the chairman or any three members of the committee, to convene at such time and place as may be appointed. Three members of the committee shall constitute a quorum. If a quorum be not present at any meeting, a majority of the members of the committee present may adjourn the meeting until a later day or hour, and a minute of such adjournment shall be entered on the records by the secretary and no further notice of such adjournment shall be required; or the members present, whether constituting a quorum or not, at their option, shall have the power to appoint a substitute or substitutes from the members of the board of directors to act during the temporary absence of any member or members of the committee."

I deny the allegation of the petition—

"That, pursuant to said by-laws, the said defendant Harriman has, with the concurrence and assistance of said individual defendants other than defendant Clark, who were members of the executive committee or directors of said company, dominated the affairs and controlled the management of said defendant Union Pacific Railroad Company."

I have, as I have stated, from time to time made investments in the capital stock of the Atchison, Topeka & Santa Fe Railway Company, and I was elected a member of the board of directors of said company in the year 1904, and have ever since continued to be a member of said board and a holder of considerable stock in said railroad company.

I deny the averments of the seventh paragraph of the bill that the purchase I made of the capital stock was in pursuance of any conspiracy to restrain trade and commerce among the several States and with foreign nations, or to monopolize or attempt to monopolize such trade or commerce, or to unlawfully restrain and prevent competition among the railroad systems named in the petition, and I deny that I purchased my said stock jointly with Harriman, Schiff, Kahn, Stillman, and Rogers. On the contrary, I purchased my said stock as my separate individual investment.

I deny that I was elected a member of the board of directors of the Atchison, Topeka & Santa Fe Railway Company for the purpose of aiding or abetting in any shape or form any such alleged conspiracy as is named in the petition, and I deny that I had or have ever united myself with any conspiracy alleged by the petition to have been made by Messrs. Harriman, Schiff, Kahn, and Stillman, and I deny that my election as a member of the board of directors of the said Atchison, Topeka & Santa Fe Railway Company was in pursuance of or carrying out of or in aid of any such alleged conspiracy.

1093 I never knew or heard of such conspiracy until the filing of the petition in this case.

I especially deny that by reason of my being upon the board of directors of the Atchison, Topeka & Santa Fe Railway Company, as also a member of the board of directors of the Union Pacific Railroad Company, that the Union Pacific Railroad Company or any of its officers or directors have had knowledge of the affairs and business of the said Atchison, Topeka & Santa Fe Railway Company; but I aver that, on the contrary, in each of my positions as director of the Union Pacific Railroad Company and as director of the Atchison, Topeka & Santa Fe Railway Company, I have been scrupulously careful not to make known to either company the acts and doings of the other.

I have not in either of those positions acted adversely to the interest of the company in which at the time I was acting as a member of its board of directors.

I recognize that each of these systems has a great future and each will in the near future have all the business it can properly attend to, and that each of the systems is more largely benefited by the general development of the West and of the territories through  
1094 which each runs, and of the business interests that each serves than from any temporary and comparatively trivial benefit which might arise from the restriction in competition for freight.

To some inconsiderable extent and at times the Union Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railroad Company have been and probably will be competitors, but the future of each of these railroad systems is to be so certain and decided that I

believe, and I act on that belief, that this future of each should dominate and control and thus minimize as a real factor in the policy of the companies the question of competition. In great and controlling degree the present and future interests of the territory traversed by each of these systems demands a thoroughly equipped railroad system properly and economically supplying the wants of the territory traversed by each, and this each of these railroad systems is endeavoring to give.

I have not as a member of the Atchison, Topeka & Santa Fe Railroad Company board disregarded or slighted its interest or welfare for the benefit of the Union Pacific Railroad Company, nor have I disclosed to the latter the business of the former; but, on the contrary, I have to the best of my ability acted as a member of the 1095 board of directors of the Atchison, Topeka & Santa Fe Railroad Company solely in the interest and the welfare of said company, and I have kept my knowledge of its affairs gained as a member of its board of directors as confidential.

I deny that the acquisition of stock by myself in the Atchison, Topeka & Santa Fe Railroad Company, or my membership on the board of directors, in any way changed or lessened the competition between the Union Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railway Company or between the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railroad Co.

I deny the averments of the petition that for the purpose of making more certain and effective the restraint of trade and commerce, and the elimination of competition and the monopolization of commerce referred to in the petition, that Harriman and his alleged coconspirators caused to be purchased by the Union Pacific Railroad Company \$10,000,000 par value of the preferred stock of the said Atchison, Topeka & Santa Fe Railway Company, but I admit that said purchase was made as a legitimate investment by the Oregon Short Line Railroad Company, and that the said company still owns the said stock, and I also admit that the Union Pacific 1096 Railroad Company owns the capital stock of said last-named company.

I deny the averments of the seventh paragraph of the bill, that the acquisition of the stock of the Atchison, Topeka & Santa Fe Railway Company, as alleged in said petition, by myself and others, has to a large extent eliminated competition between the Union Pacific Railroad Company, and the Atchison, Topeka & Santa Fe Railway Company, and I deny that I or the persons alleged to be conspirators in said paragraph of the petition have caused the Southern Pacific Company to abandon certain extensions, improvements, and additions to their railway lines in the State of California, or that the Atchison, Topeka & Santa Fe Railway Company has

been in the same manner caused and induced to abandon extensions and additions to its said railway lines in said State of California.

I then thought, and now think, that the action of the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railroad Company in the matter of the Northwestern Pacific Railway Company, as explained in the Union Pacific Railway Company's answer, was wise and prudent, and in the best interest of both of said 1097 railroad companies, and also of the public, and I deny the concluding averment of the seventh paragraph of the bill—

“That all of the said acts hereinbefore enumerated have been done in pursuance to the said conspiracy, so originally formed by certain of the defendants as fully set forth in this bill, and in which said conspiracy and confederation said other defendants joined from time to time as above alleged.”

I admit that Jacob H. Schiff, Otto H. Kahn, and James Stillman were for years members of the board of directors of the Union Pacific Railroad Company, and I admit that there is a banking firm in the State of New York doing business under the name of Kuhn, Loeb & Company, but I deny the averments of the second paragraph of the petition—“which said banking house is and during all the time above stated has been the fiscal agent of said Union Pacific Railroad Company, through which agent substantially all the purchases of said stocks hereinafter mentioned have been made.”

I admit that from time to time Kuhn, Loeb & Company have bought and sold bonds and stocks in which the Union Pacific Railroad Company has been interested.

1098 I admit that Henry H. Rogers and myself are still members of the board of directors of the Union Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railway Co.

Most of the matters and things alleged in the different paragraphs of the bill are as to transactions completed prior to the time I had any interest in either the Union Pacific Railroad Company or the Southern Pacific Company or the Atchison, Topeka & Santa Fe Railway Company; I took no part in the said matters and things averred in said paragraphs nor have I personal knowledge as to the same.

All of the matters and things alleged in the third paragraph of the bill took place prior to my election as a member of the board of directors of either the Atchison, Topeka & Santa Fe or the Union Pacific Railroad Company, and I had no personal connection with any of them. As a member of the board of directors of said two companies and also as a stockholder in said two companies and in the Southern Pacific Company I do now have a general knowledge of the location of the different lines of railroad owned by the said

different railroad companies and the systems as made up by said lines named in the petition, and I know in a general way of the Oregon Railroad & Navigation Company, of the Portland & 1099 Asiatic Steamship Company, and of the Pacific Mail Steamship Company, and I believe the routes stated in the third paragraph of the bill are correct, but I am not acquainted with the details of matters happening prior to the time that I became a member of the board of directors of the Union Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railway Company.

I admit that the Atchison, Topeka & Santa Fe Railway Company has to a certain extent since I have been on the board of directors of that company been in competition with the Union Pacific Railway Company and the Southern Pacific Railway Company, but I never took any active part in such competition, and so far as I can now recollect, no question of competition between these two companies has come up for decision before the board of directors or executive committee of either of said railroad companies at any time when I was present.

I know that the Northern Pacific Railway Company and the Great Northern Railway Company are each owners of lines of railway extending from ports on Lake Superior and also from the city of St.

Paul through different Western States, and I am informed that 1100 it is true that these two railroad companies were and are the joint owners of substantially all the stock of the Chicago, Burlington & Quincy Railroad Company, but I deny the averments in the petition that the Supreme Court of the United States has held that their lines are competitive with the lines of the Union Pacific Railway Company for a large amount of traffic, both passenger and freight.

On information which I believe to be true, I deny all the other allegations of competition as alleged in the third paragraph of the petition.

I have no personal knowledge of the matters and things alleged in the fourth paragraph of the petition, and on information which I believe to be true, I deny that the conspiracy, as is therein stated, was ever formed.

I admit that the Oregon Short Line Railroad Company is the owner of 900,000 shares of the common and 342,000 shares of the preferred capital stock of the Southern Pacific Railroad Company, but I deny that it was acquired in pursuance of any conspiracy such as therein alleged.

I admit that the said company, as holding such stock, took its share of the increase of stock made by the Southern Pacific Company, but I deny that the Union Pacific Railroad Company

1101 controls the management, operation, and business affairs of the Southern Pacific Railway Company, and I deny that the two railroads have been operating as one single, entire system since 1901, and I deny that the matters and things alleged in said fourth paragraph were done for the purpose of monopolizing the trade and commerce among the States and with foreign nations and of eliminating competition.

I had nothing to do with the acquisition of stock by the Union Pacific Railroad Company in the Northern Pacific Railway Company, as alleged in the fifth paragraph of the bill, and I have no personal knowledge of the matters and things therein referred to.

I know of the decision of the Supreme Court of the United States reported in 197 U. S., 244, as *Harriman vs. Northern Securities Company*. I was not a party to said litigation, but I deny that so far as the Union Pacific Railroad Company was concerned that the litigation was prosecuted, as alleged in the petition, for the sole purpose of effectuating the said conspiracy so originally entered into to restrain trade and commerce, smother competition, and monopolize such trade and commerce among the several States and with foreign nations.

1102 I have no personal knowledge of the matters and things alleged in the sixth paragraph of the petition or of the contract therein referred to, or of the conspiracy therein alleged, but so far as I know and so far as I have had any part in the management of the Union Pacific Railroad Company since 1904 I deny that there has been any conspiracy to which it was a party to suppress competition or monopolize trade and commerce among the States and with foreign nations, such as is alleged in the sixth paragraph of the petition.

I deny the averments of the seventh paragraph of the petition, except as hereinbefore admitted by me.

In so far as the other allegations in said petition may be material to the case of the plaintiff, I pray it be put upon proof of each and all of the same.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to

the knowledge or belief of this defendant; all of which mat-  
1103 ters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be herein dismissed with his reasonable costs in this behalf most wrongfully sustained.



1104 In the Circuit Court of the United States, District of Utah.  
In equity. No. 993.

United States of America, complainant, vs. Union Pacific Railroad  
Company et al., defendants.

Separate answer of the defendant, The Atchison, Topeka and Santa  
Fe Railway Company.

Gardiner Lathrop, Robert Dunlap, solicitors for defendant.  
P. L. Williams, of counsel.  
(Filed April 14, 1908.)

1105 United States Circuit Court, District of Utah.

United States of America, complainant, vs. Union Pacific Railroad  
Company; Oregon Short Line Railroad Company; The Oregon  
Railroad and Navigation Company; The San Pedro, Los Angeles  
and Salt Lake Railroad Company; The Atchison, Topeka and  
Santa Fe Railway Company; Southern Pacific Company; Northern  
Pacific Railway Company; Great Northern Railway Company;  
Farmers' Loan and Trust Company; Edward H. Harriman; Jacob  
H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers;  
Henry C. Frick; and William A. Clark, defendants. In equity.  
No. 993.

Separate answer of the defendant, The Atchison, Topeka and Santa  
Fe Railway Company, to the bill of complaint of the  
1106 United States of America, complainant.

This defendant, the Atchison, Topeka and Santa Fe Railway Com-  
pany, now and at all times hereafter saving to itself all and all  
manner of benefit or advantage of exception, or otherwise, that can  
or may be had or taken to the many errors, uncertainties, and imper-  
fections in said bill contained, for answer thereto, or to so much  
thereof as this defendant is advised it is material or necessary for it  
to make answer to, answering, saith:

I. This defendant admits that the Union Pacific Railroad Com-  
pany; Oregon Short Line Railroad Company; the Oregon Railroad  
and Navigation Company; the San Pedro, Los Angeles and Salt  
Lake Railroad Company; this defendant, the Atchison, Topeka and  
Santa Fe Railway Company; Southern Pacific Company; Northern  
Pacific Railway Company; and Great Northern Railway Company  
were, at the times in said bill or petition mentioned, and now are,  
common carriers, each engaged or employed in the transportation

of freight and passengers among the several States of the United States and between such States and foreign nations, and as such carriers so employed were and are engaged in trade and commerce  
1107 among the several States and with foreign nations.

II. As to all the matters and things set forth in Subdivision II of said complainant's petition or bill, this defendant says that it is a stranger to all and singular such matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

III. And this defendant admits that it has been, for a period of more than eight years last passed, the owner, and in control by direct ownership and by the ownership of the stock, of railway companies owning a portion of certain lines, and now by ownership, of a line of railway reaching from Chicago in the State of Illinois, through the States of Illinois, Missouri, Kansas, Colorado, the Territories of New Mexico and Arizona, and the State of California, to the city of San Francisco and to tidewater at San Diego, California; that said line of railway touches the Union Pacific at Kansas City, Missouri, and to a certain extent, but in connection with other connecting lines of railroads, is and has been competitive with the lines of the  
1108 Union Pacific Railroad Company and the Southern Pacific Company, in connection also with other connecting lines of railroads, for certain traffic to and from the Pacific coast, and also from the Orient in connection with steamship lines to and from various points in the east and the Mississippi Valley and in the State of Colorado and other interior States, but largely by means of such connecting lines of railway of other railway companies as aforesaid.

It admits that its tracks cross the continent between those of the Southern Pacific Company and those of the Union Pacific Railroad Company, and until the construction of the San Pedro, Los Angeles, and Salt Lake Railroad constituted the only outlet to the east by rail from territory along the Pacific coast touched by it at San Francisco, Los Angeles, and San Diego, but denies that it constituted the only outlet to the east by rail from all the territory along the Pacific coast south of Portland to the Mexican border other than the lines of the Union Pacific Railroad Company and said Southern Pacific Company. On the contrary, it avers that there were other lines connecting with said Southern Pacific Company south of Portland which formed an outlet to the east.

It denies that it was for a number of years engaged in operating a line of steamships to oriental ports from the port of  
1109 San Diego, California. It admits that traffic which was competitive as between said Southern Pacific and Union Pacific companies and this defendant was and is of considerable volume, both passenger and freight.

As to all and singular the other matters and things set forth in Subdivision III of said petition or bill, this defendant says that it is a stranger as to all and singular such other matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

IV. As to the matters and things set forth in Subdivision IV of said petition or bill, this defendant says that it is a stranger to all and singular such matters and things, and therefore leaves said complainant to make such proof thereof as it shall be able to produce.

V. As to all and singular the matters and things in Subdivision V of said petition or bill contained, this defendant says that it is a stranger to all and singular such matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

1110 VI. This defendant denies that said defendant E. H. Harriman secured to said The San Pedro, Los Angeles and Salt Lake Railroad Company the use of certain of the tracks owned or controlled by this defendant, The Atchison, Topeka and Santa Fe Railway Company, in southern California. On the contrary this defendant avers that through the action of its own directors it voluntarily granted said The San Pedro, Los Angeles and Salt Lake Railroad Company trackage rights; that is, the right to operate its trains over a portion of the line of this defendant in southern California, such arrangement being an advantageous one to this defendant, inasmuch as it derived a revenue from a part of the use of its property by said The San Pedro, Los Angeles and Salt Lake Railroad Company.

As to all and singular the other matters and things contained in Subdivision VI of said petition or bill, this defendant says that it is a stranger to all and singular such other matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

1111 VII. This defendant admits that in the year 1904 the defendant Harriman represented to certain officials of this defendant that he and other individuals associated with him had acquired approximately three hundred thousand (300,000) shares of the stock of this defendant, and stated that he thought that their interests should be represented in the directorate of this defendant, but this defendant denies that the defendant Frick joined in or made any such representation or statement. On information and belief this defendant avers that at the time when such representation and statement were made by said Harriman the defendant Frick had not purchased any stock in the defendant company and that he has never been associated with said Harriman or any of the defendants in any

purchases of stock in this defendant, but that all shares of stock in this defendant held by him were purchased by him and are held by him severally and individually as an investment. This defendant avers that its officials stated to said defendant Harriman that they would not be willing to admit representatives of the Union Pacific Railroad Company or of the Southern Pacific Company to places on the board of directors of this defendant, and it avers  
1112 further that the officials of this company were thereupon assured by the defendant Harriman that neither the Union Pacific Railroad Company nor the Southern Pacific Company had any interest in said stock purchased by himself and associates and that such stock had been purchased by himself and associates as investments. This defendant admits that by reason of the fact that under the cumulative system of voting provided for by the laws of Kansas the defendant Harriman, by virtue of the stock in the defendant company held by himself and his associates and by virtue of the proxies which he might be able to obtain from other stockholders, would probably have been able to elect at least two directors of the defendant company, and that the officials of this defendant consented and agreed that said Harriman and his associated owners of stock of this defendant might nominate two directors who would be satisfactory to the board of directors of this defendant, but with the distinct understanding that they were to represent only the stock held by himself and his associates individually and in no sense should act as representatives of either the Union Pacific Railroad Company or of the Southern Pacific Company. Accordingly, on  
February 8, 1905, the defendants, Frick and Rogers, were  
1113 chosen as directors to fill vacancies on the board of directors of this defendant, and said defendants ever since have been and now are directors of this defendant. This defendant denies that said Union Pacific Railroad Company, through said Rogers or Frick, has had knowledge of the affairs or business of this defendant, and this defendant avers on information and belief that the said Rogers and Frick at all times have acted and voted as directors of this defendant conscientiously in the interest of this defendant and not in the interest of either the Union Pacific Railroad Company or the Southern Pacific Company. This defendant denies that the said Rogers and Frick, or either of them, united themselves with the said Harriman or with any of the defendants in any conspiracy alleged in the bill of complaint. This defendant avers, on information and belief, that the stock originally acquired by said Harriman and his associates was all common stock, but that subsequently some of this common stock was sold. This defendant states that its records at present show that Mr. H. H. Rogers holds one hundred

(100) shares of stock, Mr. Frick thirty-five thousand three hundred (35,300) shares of stock, Mr. Harriman two thousand three hundred (2,300) shares of stock, and Kuhn, Loeb and Company and others, believed to be in the interest of such firm, one hundred 1114 fifty-one thousand one hundred forty-nine (151,149) shares of the stock of this defendant. But it has not been advised, and it does not know, that any of the above stock was purchased for or on behalf of the Union Pacific Railroad Company, but, on the contrary, avers that no stock has ever appeared on its records in the name of the said Union Pacific Railroad Company or of any of its associated companies. This defendant further denies that competition between the systems of railway controlled by said Union Pacific Railroad Company and that of this defendant has to any extent been eliminated, either on account of the holdings of the stock of the said Harriman and his associates or otherwise. This defendant further denies that it has been induced by said Harriman and his associates to abandon extensions or additions to its lines of railway in the State of California.

It admits that certain lines of railroad partially constructed within the State of California, formerly owned by corporations whose stock was owned or controlled by this defendant, and that certain other lines of railroad partially constructed within the State of California, formerly owned by corporations whose capital stock was owned or 1115 controlled by the Southern Pacific Company, were conveyed to a company incorporated under the laws of California under the name of "Northwestern Pacific Railroad Company," and that one-half of the capital stock of said last-named company is owned by this defendant and the other half by the Southern Pacific Company, but it states that all of the corporations which formerly owned said lines of railway and said Northwestern Pacific Railway Company itself were incorporated under the laws of the State of California, and that such sales and consolidation were made under and by authority of the laws of said State; that said lines of railway so consolidated formed by further construction connecting lines, and such consolidation thus afforded better railway facilities to the northwestern part of California than had been theretofore afforded by the several respective lines theretofore operated by their several respective companies. This defendant further says that prior to such consolidation the companies whose stock was as aforesaid owned by it only owned and operated about fifty miles out of Eureka and a few miles of detached line in Mendocino County; that such consolidation gave this defendant, through said Northwestern Pacific Railway Company, access for traffic to the territory served by said several lines north of San Francisco Bay; that said trans-

1116 action did not prevent competition or result in a monopoly, but, on the contrary, prevented the Southern Pacific Company from having or maintaining a monopoly in the aforesaid territory north of San Francisco Bay; that but for this consolidation it would have been impracticable to build the extension connecting Eureka with the San Francisco Bay or to furnish needed railway facilities to the territory which should be served by these lines.

This defendant denies that the lines of railway of the Union Pacific Railroad Company and the Southern Pacific Company and of this defendant are operated in harmony with each other under agreements or understandings as to rates or divisions of business, and this defendant says that it was at no time a party to any alleged conspiracy set forth in said petition or bill, and that as to all and singular the other matters and things in Subdivision VII of said petition or bill this defendant is a stranger to all and singular such other matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

VIII. And this defendant submits to this honorable court 1117 that all and every of the matters in said complainant's petition or bill mentioned and complained of are matters with respect to which the said complainant is not entitled to any relief as against this defendant from a court of equity, and this defendant hopes that it will have the same benefit of this defense as if it had demurred to said complainant's bill or petition.

IX. And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that if there is any other matter, cause, or thing in said complainant's said bill of complaint or petition contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, the same is not true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

1118 THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,  
By W. B. JANSEN,  
*Its Fourth Vice-President.*

GARDINER LATHROP,

ROBERT DUNLAP,

*Solicitors for the Atchison, Topeka and  
Santa Fe Railway Company.*

P. L. WILLIAMS, *Of Counsel.*

1119 No. 993. United States Circuit Court, district of Utah. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company et al., defendants.

Answer of the defendant Henry H. Rogers.

Shearman & Sterling, attorneys for defendant. James M. Beck, P. L. Williams, of counsel.

(Filed May 2, 1908.)

1120 United States Circuit Court, district of Utah. No. 993. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

1121 The answer of Henry H. Rogers to the petition of the United State of America.

This defendant, protesting and objecting that he was not, when the petition was filed, nor has he since been, nor is he now a resident of the district of Utah, and that this court has not, as to him, jurisdiction of the matters and things charged in the petition, and saving unto himself all manner of benefits and advantages by way of exception or otherwise which may or can be taken to the many irregularities, errors and mistakes, imperfections and uncertainties in the petition contained, for answer to said petition, or to so much as he is advised it is necessary or material for him to make answer to, answering, says:

This defendant denies all the allegations of the petition that at any time or in any way he was a member of any group or combination of persons, which controlled or sought to control the Union Pacific Railroad Company or the Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway Company, or any other railroad company named in the petition, and he denies that he ever entered into any conspiracy or aided or abetted any conspiracy which had for its

object the restraint of trade and commerce among the several  
1122 States or between the said States and foreign countries as  
carried on by the Union Pacific Railroad Company and the  
Southern Pacific Company, or the system of either or by any other  
lines of railroads or steamships as named in the petition, and he denies that in any way he ever entered into any combination or conspiracy or aided or abetted any combination or conspiracy to unlawfully deprive the public of the facilities and advantages in the carrying on of interstate and foreign trade and commerce theretofore enjoyed through the independent competition of the railway systems and steamship lines named in the petition, or that he ever was a member of any unlawful combination or conspiracy whose object was to effect a virtual or substantial combination of the Union Pacific Railroad Company and any other transcontinental railway company or companies or steamship line or lines, or whose object or purpose was to place restraint on any or all competitive interstate and foreign trade and commerce, or to monopolize or attempt to monopolize the same or to suppress competition in the same as averred in the petition, or that he ever in any way was a party to or aided or abetted any such alleged combination or conspiracy. This defendant denies that  
he ever violated the provisions of an act of Congress approved  
1123 July 2, 1890, entitled "An act to protect trade and commerce  
against unlawful restraints and monopolies," and asks that  
this denial be regarded by the court for the sake of brevity as repeated as against every allegation in said petition, which charges to the contrary as to this defendant.

For further answer this defendant says:

This defendant is now and for a number of years has been an investor in the capital stock of the Union Pacific Railroad Company, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railroad Company. These investments were not made with any view to exercising any control in the respective companies beyond the partial control which this defendant, in common with any stockholder, exercises in proportion to his stock holdings, and they were further made with this defendant's own means and credit, in the belief which this defendant had that the investments were legitimate ones and that this defendant was entitled to all the rights, privileges, and profits which would lawfully and legitimately result from such investments. These investments were not made or held with any purpose or object on the part of this defendant, either alone or in  
conjunction with others, to restrain competition in interstate  
1124 or foreign traffic or with any purpose or object of forming or  
maintaining any monopoly. This defendant avers that no monopoly in transportation has existed or is likely to exist, and that he never had any thought, purpose, or plan, either individually or in



conjunction with others, to form a combination of railroads, as is charged in Paragraph IV of the petition.

This defendant became a director of the Union Pacific Railroad on the eighth day of October, 1901, and is still a director of said company. As such director he has at all times acted according to his best judgment for the true and lawful interests of the said railroad, and has never knowingly failed in any duty which he owed as such director either to the railroad company or to the public.

Further answering the said petition, by paragraphs, this defendant says:

I. The averments contained in the first paragraph of the petition this defendant believes to be true.

II. (1) He denies that from or at any time after January 1, 1901, he and the other defendants named in the first sentence of Paragraph II of the petition have owned or controlled a majority  
1125 of the capital stock of the Union Pacific Railroad Company.

(2) He admits that he became a director of said Union Pacific Railroad Company on the eighth day of October, 1901, and is still a director of said company.

(3) He admits that during all of said time the said Jacob H. Schiff and Otto H. Kahn were and still are members of a banking firm of the city of New York, doing business under the name and style of "Kuhn, Loeb & Co.," but denies that said banking house has been or is the "fiscal agent" of the defendant Union Pacific Railroad Company; and he admits that some of the stocks referred to in the petition were bought by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company, respectively, from time to time through said banking house, and that some of the bonds issued by said companies were sold to said firm.

(4) He admits that said Harriman, Schiff, Stillman, and Frick became directors and served as such as stated in Paragraph II of said petition.

(5) As to the true meaning and effect of the by-laws, referred to in Paragraph III of the petition, this defendant asks for greater  
1126 certainty, if the inquiry be material and relevant, that the petitioner be required to formally prove the by-laws by their production so that this court may itself determine their true meaning.

(6) He denies that pursuant to such by-laws or otherwise the said Harriman has, with the concurrence of said individual defendants other than Defendant Clark, who are members of the executive committee or board of directors of said company, dominated the affairs and controlled the management of said Union Pacific Railroad Company.

III. Most of the averments contained in Paragraph III of the petition refer to transactions which took place prior to the time

when this defendant became a director in the railroad company, and as to such transactions this defendant disclaims personal knowledge. Except as hereinafter specifically admitted or denied, the other averments refer to transactions as to which this defendant has no personal knowledge. This defendant, however, on information and belief accepts and adopts the respective admissions and denial to Paragraph III of the said petition which are contained in the joint and several answer of the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon  
1127 Railroad and Navigation Company, and he asks that such admissions, denials, and averments may be regarded as part of this answer as fully as though recited herein, they being omitted for the sake of brevity and because they are already before the court in the joint answer above referred to.

IV. (1) He denies on information and belief that in the spring of 1901, or at any other time, said Schiff, Kahn, Harriman, Stillman, and Union Pacific Railroad Company, or any of them, conspired to restrain trade and commerce among the foreign States and between said States and several countries, carried on by said Union Pacific Railroad Company and said Southern Pacific Company or any other company, or to monopolize or attempt to monopolize any such trade and commerce or to restrain or prevent competition among said railway systems or any other railway systems, and said steamship lines or any other steamship lines in respect to any such commerce; or to deprive the public of the facilities and advantages in the carrying on of such trade and commerce through the independent competition, if any there was, of said railway systems and steamship lines or other  
1128 railway systems or steamship lines; or that he and the said defendants or any of them ever entered into a combination or conspiracy for a virtual or substantial consolidation of said Union Pacific Railroad Company and any other transcontinental railway companies or steamship companies; or to place restraint upon any competitive commerce, if any such there was, carried on by such companies; or to monopolize or attempt to monopolize the same; or to suppress any competition existing between any of said companies or lines.

(2) He admits on information that on the 20th day of February, 1901, defendant Union Pacific Railroad Company acquired by purchase from said firm of Kuhn, Loeb & Co. 750,000 shares of the capital stock of said Southern Pacific Company of the aggregate par value of \$75,000,000 out of 1,978,399 shares of the aggregate par value of \$197,839,900, then issued and outstanding, but he denies that the said stock was purchased or acquired in pursuance of any conspiracy or combination or for any of the purposes alleged in said petition.

(3) He admits on information that thereafter, to wit, on or about the 26th day of February, 1902, defendant Union Pacific Railroad Company sold and delivered the said 750,000 shares of the 1129 stock of the Southern Pacific Company to defendant Oregon Short Line Railroad Company, which has ever since owned and still owns the same.

(4) He admits on information that thereafter, to wit, on or about the 31st day of May, 1902, defendant Oregon Short Line Railroad Company acquired by purchase from said Kuhn, Loeb & Co. 150,000 additional shares of stock of said Southern Pacific Company, which said Oregon Short Line Railroad Company has ever since owned and which it still owns.

(5) He admits on information that thereafter when, on or about the 20th day of July, 1904, defendant Southern Pacific Company created an issue of preferred stock which it offered to its stockholders for subscription, said Oregon Short Line Railroad Company as the owner of 900,000 shares of the common stock of said Southern Pacific Company, exercised its right and subscribed for and received, and has ever since owned and still owns, 180,000 shares of the preferred stock of said Southern Pacific Company; and that thereafter, in July, 1907, when said Southern Pacific Company increased its said preferred stock by an additional issue thereof which it offered to the holders of its outstanding stock for subscription, said Oregon Short Line Railroad Company, as the owner of 1,080,000 1130 shares of the stock of said Southern Pacific Company, exercised its right and subscribed for and received 162,000 additional shares of the preferred stock of said Southern Pacific Company, and has ever since owned, and still owns, the same, so that said Oregon Short Line Railroad Company now owns 900,000 shares of common stock and 342,000 shares of preferred stock, making a total of 1,242,000 shares of the capital stock of said Southern Pacific Company, out of a total of 2,726,498 shares issued and outstanding.

(6) He denies that the said preferred stock was issued by said Southern Pacific Company, or that any of the common stock of said company was acquired or has been held by said Oregon Short Line Railroad Company or the Union Pacific Railroad Company, in pursuance of any combination or conspiracy or for any of the purposes or with the intent alleged in said petition.

(7) He admits on information that at the annual meeting of the Southern Pacific Company held the 3d day of April, 1901, and at every meeting of the stockholders of said company since said date, the stock so acquired and owned by said Oregon Short Line Railroad Company has constituted a majority of the shares represented at such meetings; and he admits that by voting upon the said

1131 shares, through its duly authorized agents and proxies, and by the voting by the same agents and proxies, upon shares of other stockholders of said Southern Pacific Company, delegated to it, the defendant Oregon Short Line Railroad Company has been able to elect the directors of said Southern Pacific Company; but he is informed and believes that at no such meeting have any votes ever been cast by any stockholder against the persons so elected.

(8) He admits on information that the stock of said Southern Pacific Company not owned by defendant Oregon Short Line Railroad Company is owned by a large number of individuals, firms, and corporations residing in many different places; but he denies that said stockholders are or will be unable to elect the directors of said Southern Pacific Company, if they should deem it to their interest to do so, in opposition to those voted for by said Oregon Short Line Railroad Company; and he avers that the reason why said stockholders have not heretofore elected the directors of said company is that they have been satisfied with the directors nominated and elected by the agents and proxies of said Oregon Short Line Railroad Company in conjunction with the agents or proxies of other stockholders and their management of said company.

1132 (9) He denies that the Union Pacific Railroad Company or the Oregon Short Line Railroad Company controls or has ever controlled the management, operation, and business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as lawfully and proportionately results from the voting upon the stock of said Southern Pacific Company owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern Pacific Company.

(10) He admits that since April 9, 1901, a majority of the persons who have been directors of said Southern Pacific Company were at the same time directors of said Union Pacific Railroad Company.

(11) He disclaims personal knowledge as to the alleged competition between the steamship and railroad lines and asks that petitioner be put upon proof of such averments, if they be material or pertinent to any lawful inquiry in this case.

(12) He avers, on information, that the acquisition by the Union Pacific Railroad Company and Oregon Short Line Railroad Company of 750,000 shares of the stock of said Southern Pacific Company in 1901, and of said additional 150,000 shares of such

1133 stock in 1902 by defendant Oregon Short Line Railroad Company, were actual purchases of said stock, made in good faith, and were completed and fully executed by the delivery of the certificates for said 750,000 shares in 1901 and for said 150,000 shares in

1902 and by the payment of the price therefor at the time of such delivery; that the acquisition of the preferred stock of said Southern Pacific Company by defendant Oregon Short Line Railroad Company, as aforesaid, by the exercise of subscription rights, did not and has not changed the relative voting strength of position of the said Oregon Short Line Railroad Company from what it was upon the completion of the purchase of said two lots aggregating 900,000 shares of the common stock of the Southern Pacific Company as aforesaid.

(13) He denies all the allegations of Subdivision IV of the petition, respecting the said Schiff, Kahn, Harriman, Union Pacific Railroad Company, and this defendant, and of any conspiracy or combination among them for any of the purposes or with any of the intents alleged, and denies each and every allegation of Paragraph IV of said petition not herein expressly admitted.

V. (1) He denies, on information, that the said Schiff, 1134 Kahn, Harriman, Stillman, Union Pacific Railroad, or any of them, in the spring of 1901, or at any other time, caused the Union Pacific Railroad Company to acquire a majority of the stock of the Northern Pacific Railway Company pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign nations, or to monopolize or attempt to monopolize such trade and commerce, or to suppress any competition; and he denies all the allegations of Subdivision V of the petition respecting any conspiracy or combination for any purpose between any of the defendants to this suit.

(2) He admits on information that in the year 1901 said Oregon Short Line Railroad Company purchased \$37,023,000, par value, of the common stock and \$41,085,000, par value, of the preferred stock of the Northern Pacific Railway Company, and that at the time of such purchase the total stock of the Northern Pacific Railway Company issued and outstanding was of the aggregate par value of \$155,000,000.

(3) He admits on information the sale and transfer of said stock to the Northern Securities Company, and the receipt by said Oregon Short Line Railroad Company of \$82,491,841, par value, of the stock of said Northern Securities Company.

(4) He admits the commencement of a suit by the United 1135 States of America against said Northern Securities Company and others, and the decision of said suit as alleged in the petition.

(6) He is informed that defendant Oregon Short Line Railroad Company, upon the final decision of said suit, proceeded from time to time to sell the stock of the Northern Pacific Railway Company and of the Great Northern Railway Company so received by it as

opportunity to sell the same advantageously appeared; and that by such sales the amount of such stock so held has been steadily reduced, so that at the date of the commencement of this suit the said Oregon Short Line Railroad Company had sold all but 32,516 shares of the stock of the Great Northern Railway Company and all but 38,745 shares of the stock of the Great Northern Railway Company, which it still owns, but with no intent to restrain or monopolize interstate or foreign commerce or any part thereof.

(7) This defendant was not a party to the litigation which was begun in the Circuit Court of the United States for the District of New Jersey, referred to in Paragraph V of the petition; but, on information and belief, he denies that the litigation was prosecuted, as alleged in the petition, for the purpose of effectuating the said conspiracy so originally entered into to restrain trade and commerce, smother competition, and monopolize trade and commerce among the several States and with foreign nations.

VI. This defendant denies any and every averment contained in Paragraph VI of the petition, which charges that this defendant was a party to or aided or abetted in any alleged conspiracy or unlawful combination. As to the other averments contained in said paragraph, this defendant has no personal knowledge or recollection which enables him to either admit or deny them, and he asks that the petitioner be put upon proof of the same, if the same averments be material and pertinent to any lawful inquiry before this court.

VII. (1) He denies that pursuant to any conspiracy to restrain trade and commerce among the several States with foreign nations or to monopolize or attempt to monopolize any such trade and commerce or to restrain or prevent competition among any of said railway systems he and the defendants Schiff, Kahn, Harriman, Stillman, and Frick, or any of them, in the year 1904, or at any other time, made large purchases of stock of the Atchison,

Topeka and Santa Fe Railway Company, aggregating \$30,000,000 par value of said stock or any other amount; and he denies that he or any of the other defendants at any time demanded of any officials of the said Atchison, Topeka and Santa Fe Railway Company that any of the defendants herein should be elected directors of the Atchison, Topeka and Santa Fe Railway Company.

(2) He admits that in the year 1904 he and said Frick were elected directors of the Atchison, Topeka and Santa Fe Railway Company, and have since served, and are still serving, as such directors; but he denies that they were so elected for any of the reasons alleged in Subdivision VII of the petition herein, and denies that by means of such election the defendant Union Pacific Railroad Company has had knowledge of the affairs and business of said the Atchison, Topeka and Santa Fe Railway Company. This defendant avers that

in discharging his duties as a director of the said Atchison Railroad Company he has always endeavored to protect and advance its best interests, and he has never intentionally acted adversely to such interests, either for the benefit of the Union Pacific Railroad Company or any other railroad company.

1138 (3) He admits on information that in July, 1906, defendant Oregon Short Line Railroad Company purchased, and has ever since owned, \$10,000,000 par value of the capital stock of said the Atchison, Topeka and Santa Fe Railway Company out of a total issue of preferred and common stock of said company outstanding of the aggregate par value of \$216,199,530, but he denies that such purchase was for any of the purposes alleged in said petition, or in furtherance of any unlawful combination or conspiracy.

(4) He denies that he or any associates of his or defendant Union Pacific Railroad Company, or all of them, have any control, partial or otherwise, of said The Atchison, Topeka and Santa Fe Railway Company.

(5) He denies that competition between the systems of railway controlled by defendant Union Pacific Railroad Company and by said The Atchison, Topeka and Santa Fe Railway Company has to any extent been eliminated.

(6) He denies that he or any other persons alleged in said petition to be "conspirators" have caused defendant Southern Pacific Company or the Atchison, Topeka and Santa Fe Railway Company to abandon any extensions, improvements, and additions to their lines in California or elsewhere.

1139 (7) He denies that the lines of railroad of the Atchison, Topeka and Santa Fe Railway Company are operated in harmony with the lines of said Union Pacific Railroad Company or said Southern Pacific Company under agreements and understandings as to rates and divisions of business, and that competition between such lines has been eliminated or in anywise restricted.

(8) As to any other averments contained in the Paragraph VII of the petition not hereinbefore expressly admitted or denied, this defendant disclaims personal knowledge and asks that the petitioner be put upon proof of the same, if the same be material and pertinent to any lawful inquiry before this court.

VIII. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other manner, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing

1140 to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in his behalf most wrongfully sustained.

JAMES M. BECK,  
P. L. WILLIAMS,  
SHEARMAN & STERLING,  
*Solicitors for Defendants.*

1141 In the United States Circuit Court, District of Utah.

The United States of America, complainant, versus The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

The answer of James Stillman to the bill of complaint of the United States of America.

Shearman & Sterling, attorneys for defendants. James M. Beck, P. L. Williams, of counsel.  
(Filed May 2, 1908.)

1142 United States Circuit Court, District of Utah. No. 993. In Equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

1143 The answer of James Stillman to the petition of the United States of America.

This defendant, protesting and objecting that he was not, when the petition was filed, nor has he since been, nor is he now a resident of the district of Utah, and that this court has not, as to him, juris-



diction of the matters and things charged in the petition, and saving unto himself all manner of benefits and advantages by way of exception or otherwise which may or can be taken to the many irregularities, errors and mistakes, imperfections and uncertainties in the petition contained, for answer to said petition, or to so much as he is advised it is necessary or material for him to make answer to, answering, says:

This defendant denies all the allegations of the petition that at any time or in any way he was a member of any group or combination of persons which controlled or sought to control, the Union Pacific Railroad Company or the Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway Company, or any other railroad company named in the petition, and he denies that he ever entered into any conspiracy or aided or abetted any conspiracy which

1144 had for its object the restraint of trade and commerce among

the several States or between the said States and foreign countries as carried on by the Union Pacific Railroad Company and

the Southern Pacific Company, or the system of either or by any other lines of railroads or steamships as named in the petition, and he denies that in any way he ever entered into any combination or conspiracy or aided or abetted any combination or conspiracy to unlawfully deprive the public of the facilities and advantages in the carrying on of interstate and foreign trade and commerce theretofore enjoyed through the independent competition of the railway systems and steamship lines named in the petition, or that he ever was a member of any unlawful combination or conspiracy whose object was to effect a virtual or substantial combination of the Union Pacific Railroad Company and any other transcontinental railway company or companies or steamship line or lines, or whose object or purpose was to place restraint on any or all competitive interstate and foreign trade and commerce, or to monopolize or attempt to monopolize the same or to suppress competition in the same as averred in the petition, or that he ever in any way was a party to or aided or abetted any such alleged combination or conspiracy. This defendant denies

that he ever violated the provisions of an act of Congress

1145 approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and

asks that this denial be regarded by the court for the sake of brevity as repeated as against every allegation in said petition, which charges to the contrary as to this defendant.

For further answer, this defendant says:

This defendant is now and for a number of years has been an investor in the capital stock of the Union Pacific Railroad Company, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railroad Company. These investments were not made with any

view to exercising any control in the respective companies beyond the partial control which this defendant, in common with any stockholder, exercised in proportion to his stock holdings, and they were further made with this defendant's own means and credit, in the belief which this defendant had that the investments were legitimate ones, and that this defendant was entitled to all the rights, privileges, and profits which would lawfully and legitimately flow from such investments. These investments were not made or held with any purpose or object on the part of this defendant, either alone or

in conjunction with others, to restrain competition in interstate or foreign traffic or with any purpose or object of forming or maintaining any monopoly. This defendant avers that no monopoly in transportation has existed or is likely to exist, and that he never had any thought, purpose, or plan, either individually or in conjunction with others, to form a combination of railroads, as is charged in Paragraph IV of the petition.

This defendant became a director of the Union Pacific Railroad on the sixth day of December, 1897, and continued as such until the thirteenth day of February, 1908. As such director he has at all times acted according to his best judgment for the true and lawful interests of the said railroad and has never knowingly failed in any duty which he owed as such director, either to the railroad company or to the public.

Further answering the said petition by paragraphs, this defendant says:

I. The averments contained in the first paragraph of the petition this defendant believes to be true.

II. (1) He denies that from or at any time after January 1, 1901, he and the other defendants named in the first sentence of Paragraph II of the petition have owned or controlled a majority of the capital stock of the Union Pacific Railroad Company.

(2) He admits that he became a director of said Union Pacific Railroad Company on the 6th day of December, 1897, and continued to be a director of said company until the thirteenth day of February, 1908, when he resigned.

(3) He admits that he was a member of the executive committee of the board of directors from the 8th day of December, 1897, until the thirteenth day of February, 1908, and that the said Otto H. Kahn was a member of said committee from the 8th day of December, 1897, until the 10th day of April, 1906.

(4) He admits that during all of said time the said Jacob H. Schiff and Otto H. Kahn were and still are members of a banking firm of the city of New York, doing business under the name and style of "Kuhn, Loeb & Co.," but denies that said banking house has

been or is the "fiscal agent" of the defendant Union Pacific Railroad Company; and he admits that some of the stocks referred to in the petition were bought by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company, respectively, from 1148 time to time through said banking house, and that some of the bonds issued by said companies were sold to said firm.

(5) He admits that Harriman, Schiff, Rogers, and Frick became directors and served as such, as stated in Paragraph II of said petition.

(6) As to the true meaning of the by-laws referred to by petitioner in Paragraph III, this defendant asks for greater certainty, if the inquiry be material and relevant, that the petitioner be required to formally prove the by-laws by their production, so that this court may itself determine their true meaning.

(7) He denies that pursuant to such by-laws or otherwise the said Harriman has, with the concurrence of said individual defendants other than defendant Clark, who are members of the executive committee or board of directors of said company, dominated the affairs and controlled the management of said Union Pacific Railroad Company.

III. This defendant, on information and belief, accepts and adopts the respective admissions and denials to Paragraph III of the said petition, which are contained in the joint and several answer 1149 of the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company, and he asks that such admissions, denials, and averments may be regarded as part of this answer as fully as though recited herein, they being omitted for the sake of brevity and because they are already before the court in the joint answer above referred to.

IV. (1) He denies that in the spring of 1901 or at any other time he and the defendant Schiff, Kahn, Harriman and Union Pacific Railroad Company, or any of them, conspired to restrain trade and commerce among the foreign States and between said States and several countries carried on by said Union Pacific Railroad Company and said Southern Pacific Company or any other company, or to monopolize or attempt to monopolize any such trade and commerce or to restrain or prevent competition among said railway systems or any other railway systems and said steamship lines or any other steamship lines in respect to any such commerce, or to deprive the public of the facilities and advantages in the carrying on of such trade and commerce through the independent competition, if any there was, of said railway systems and steamship lines or 1150 other railway systems or steamship lines, or that he and the said defendants, or any of them, ever entered into a combi-

nation or conspiracy for a virtual or substantial consolidation of said Union Pacific Railroad Company and any other transcontinental railway companies or steamship companies, or to place restraint upon any competitive commerce, if any such there was, carried on by such companies, or to monopolize or attempt to monopolize the same, or to suppress any competition existing between any of said companies or lines.

(2) He admits on information that on the 20th day of February, 1901, defendant Union Pacific Railroad Company acquired by purchase from said firm of Kuhn, Loeb & Co. 750,000 shares of the capital stock of said Southern Pacific Company of the aggregate par value of \$75,000,000 out of 1,978,399 shares of the aggregate par value of \$197,839,900 then issued and outstanding, but he denies that the said stock was purchased or acquired in pursuance of any conspiracy or combination or for any of the purposes alleged in said petition.

(3) He admits on information that thereafter, to wit, on or about the 26th day of February, 1902, defendant Union Pacific Railroad Company sold and delivered the said 750,000 shares of the stock of Southern Pacific Company to defendant Oregon Short Line Railroad Company, which has ever since owned and still owns the same.

(4) He admits on information that thereafter, to wit, on or about the 31st day of May, 1902, defendant Oregon Short Line Railroad Company acquired by purchase from said Kuhn, Loeb & Co. 150,000 additional shares of stock of said Southern Pacific Company, which said Oregon Short Line Railroad Company has ever since owned and which it still owns.

(5) He admits on information that thereafter, when, on or about the 20th day of July, 1904, defendant Southern Pacific Company created an issue of preferred stock which it offered to its stockholders for subscription at par, said Oregon Short Line Railroad Company as the owner of 900,000 shares of the common stock of said Southern Pacific Company exercised its right and subscribed for and received and has ever since owned and still owns 180,000 shares of the preferred stock of said Southern Pacific Company; and that thereafter, in July, 1907, when said Southern Pacific Company increased its said preferred stock by an additional issue thereof which it offered to the holders of its outstanding stock for subscription at par, said Oregon Short Line Railroad Company as the owner of 1,080,000 shares of the stock of said Southern Pacific Company exercised its right and subscribed for and received 162,000 additional shares of the preferred stock of said Southern Pacific Company, and has ever since owned and still owns the same; so that said Oregon Short Line Railroad Company now owns 900,000 shares of

common stock and 342,000 shares of preferred stock, making a total of 1,242,000 shares of the capital stock of said Southern Pacific Company out of a total of 2,726,498 shares issued and outstanding.

(6) He denies that the said preferred stock was issued by said Southern Pacific Company or that any of the common stock of said company was acquired or has been held by said Oregon Short Line Railroad Company or the Union Pacific Railroad Company in pursuance of any combination or conspiracy or for any of the purposes or with the intent alleged in said petition.

(7) He admits on information that at the annual meeting of the Southern Pacific Company held the 3d day of April, 1901, and at every meeting of the stockholders of said company since said date, the stock so acquired and owned by said Oregon Short Line  
1153 Railroad Company has constituted a majority of the shares represented at such meetings; and he admits that by voting upon the said shares through its duly authorized agents and proxies and by the voting by the same agents and proxies upon shares of other stockholders of said Southern Pacific Company delegated to it the defendant Oregon Short Line Railroad Company has been able to elect the directors of said Southern Pacific Company; but he is informed and believes that at no such meeting have any votes ever been cast by any stockholder against the persons so elected.

(8) He admits, on information, that the stock of said Southern Pacific Company not owned by defendant Oregon Short Line Railroad Company is owned by a large number of individuals, firms, and corporations residing in many different places; but he denies that said stockholders are or will be unable to elect the directors of said Southern Pacific Company, if they should deem it to their interest to do so, in opposition to those voted for by said Oregon Short Line Railroad Company; and he avers that the reason why said stockholders have not heretofore elected the directors of said company is that they have been satisfied with the directors nominated  
and elected by the agents and proxies of said Oregon Short  
1154 Line Railroad Company, in conjunction with the agents or proxies of other stockholders and their management of said company.

(9) He denies that the Union Pacific Railroad Company or the Oregon Short Line Railroad Company controls or has ever controlled the management, operation, and business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as lawfully and proportionately results from the voting upon the stock of said Southern Pacific Company, owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern Pacific Company.

(10) He admits that since April 9, 1901, a majority of the persons who have been directors of said Southern Pacific Company were at the same time directors of said Union Pacific Railroad Company.

(11) He disclaims personal knowledge as to the alleged competition between the steamship and railroad lines, and asks that petitioner be upon proof of such averments, if they be material or pertinent to any lawful inquiry in this case.

(12) He avers on information that the acquisition by the Union Pacific Railroad Company and Oregon Short Line Railroad  
1155 Company of 750,000 shares of the stock of said Southern Pacific Company in 1901, and of said additional 150,000 shares of such stock in 1902 by defendant Oregon Short Line Railroad Company, were actual purchases of said stock, made in good faith, and were completed and fully executed by the delivery of the certificates for said 750,000 shares in 1901, and for said 150,000 shares in 1902, and by the payment of the price therefor at the time of such delivery; that the acquisition of the preferred stock of said Southern Pacific Company by defendant Oregon Short Line Railroad Company as aforesaid, by the exercise of subscription rights did not and has not changed the relative voting strength of position of the said Oregon Short Line Railroad Company from what it was upon the completion of the purchase of said two lots, aggregating 900,000 shares of the common stock of the Southern Pacific Company as aforesaid.

(13) He denies all the allegations of Subdivision IV of the petition, respecting the said Schiff, Kahn, Harriman, Union Pacific Railroad Company, and this defendant, and of any conspiracy or combination among them for any of the purposes or with any of the intents alleged, and denies each and every allegation of Paragraph IV of said petition not herein expressly admitted.

1156 V. (1) He denies that he and the said Schiff, Kann, Harri- man, Union Pacific Railroad, or any of them, in the spring of 1901, or at any other time, caused the Union Pacific Railroad Company to acquire a majority of the stock of the Northern Pacific Railway Company pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign nations, or to monopolize or attempt to monopolize such trade and commerce, or to suppress any competition; and he denies all the allegations of Subdivision V of the petition respecting any conspiracy or combination for any purpose between any of the defendants to this suit.

(2) He admits on information that in the year 1901 said Oregon Short Line Railroad Company purchased \$37,023,000 par value of the common stock, and \$41,085,000 par value of the preferred stock of the Northern Pacific Railway Company, and that at the time of such purchase the total stock of the Northern Pacific Railway Com-

pany issued and outstanding was of the aggregate par value of \$155,000,000.

(3) He admits on information the sale and transfer of said stock to the Northern Securities Company, and the receipt by said  
1157 Oregon Short Line Railroad Company of \$82,491,841 par value of the stock of said Northern Securities Company.

(4) He admits the commencement of a suit by the United States of America against said Northern Securities Company and others, and the decision of said suit as alleged in the petition.

(6) He is informed that defendant Oregon Short Line Railroad Company, upon the final decision of said suit, proceeded from time to time to sell the stock of the Northern Pacific Railway Company, and of the Great Northern Railway Company, so received by it, as opportunity to sell the same advantageously appeared; and that by such sales the amount of such stock so held has been steadily reduced so that at the date of the commencement of this suit the said Oregon Short Line Railroad Company had sold all but 32,516 shares of the Northern Pacific Railway Company, and all but 38,745 shares of the stock of the Great Northern Railway Company, which it still owns, but with no intent to restrain or monopolize interstate or foreign commerce or any part thereof.

(7) This defendant was not a party to the litigation which  
1158 was begun in the Circuit Court of the United States for the

District of New Jersey, referred to in paragraph V of the petition, but, on information and belief, he denies that the litigation was prosecuted, as alleged in the petition, for the purpose of effectuating the said conspiracy so originally entered into to restrain trade and commerce, smother competition, and monopolize trade and commerce among the several States and with foreign nations.

VI. This defendant denies any and every averment contained in Paragraph VI of the petition, which charges that this defendant was a party to or aided or abetted in any alleged conspiracy or unlawful combination. As to the other averments contained in said paragraph, this defendant has no personal knowledge or recollection which enables him to either admit or deny them, and he asks that the petitioner be put upon proof of the same, if the said averments be material and pertinent to any lawful inquiry before this court.

VII. (1) He denies that pursuant to any conspiracy to restrain trade and commerce among the several States with foreign nations or to monopolize or attempt to monopolize any such trade  
1159 and commerce or to restrain or prevent competition among any of said railway systems he and the defendants Schiff, Kahn, Harriman, Rogers, and Frick, or any of them, in the year 1904, or at any other time, made large purchases of stock of the

Atchison, Topeka and Santa Fe Railway Company, aggregating \$30,000,000 par value of said stock or any other amount; and he denies that he or any of the other defendants at any time demanded of any officials of the said the Atchison, Topeka and Santa Fe Railway Company that any of the defendants herein should be elected directors of the Atchison, Topeka and Santa Fe Railway Company.

(2) He admits on information that in the year 1904 the defendants Frick and Rogers were elected directors of the Atchison, Topeka and Santa Fe Railway Company, and have since served and are still serving as such directors; but he denies that they were so elected for any of the reasons alleged in Subdivision VII of the petition herein, and denies that by means of such election the defendant Union Pacific Railroad Company has had knowledge of the affairs and business of said The Atchison, Topeka and Santa Fe Railway Company.

(3) He admits on information that in July, 1906, defendant 1160 Oregon Short Line Railroad Company purchased, and has ever since owned, \$10,000,000 par value of the capital stock of said The Atchison, Topeka and Santa Fe Railway Company out of a total issue of preferred and common stock of said company outstanding of the aggregate par value of \$216,199,530, but he denies that such purchase was for any of the purposes alleged in said petition or in furtherance of any unlawful combination or conspiracy.

(4) He denies that he or any associates of his or defendant Union Pacific Railroad Company, or all of them, have any control, partial or otherwise, of said The Atchison, Topeka and Santa Fe Railway Company.

(5) He denies that competition between the systems of railway controlled by defendant Union Pacific Railroad Company and by said The Atchison, Topeka and Santa Fe Railway Company has to any extent been eliminated.

(6) He denies that he or any other persons alleged in said petition to be "conspirators" have caused defendant Southern Pacific Company or the Atchison, Topeka and Santa Fe Railway Company to abandon any extensions, improvements, and additions to their lines in California or elsewhere.

(7) He denies that the lines of railroad of the Atchison, 1161 Topeka and Santa Fe Railway Company are operated in harmony with the lines of said Union Pacific Railroad Company or said Southern Pacific Company under agreements and understandings as to rates and divisions of business, and that competition between such lines has been eliminated or in any wise restricted.

(8) As to any other averments contained in the Paragraph VII of the petition, not hereinbefore expressly admitted or denied, this defendant disclaims personal knowledge and asks that the petitioner



be put upon proof of the same, if the same be material and pertinent to any lawful inquiry before this court.

VIII. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other manner, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct,  
1162 and humbly prays to be hence dismissed with his reasonable costs and charges in his behalf most wrongfully sustained.

JAMES M. BECK,  
P. L. WILLIAMS,  
SHEARMAN & STERLING,  
*Solicitors for Defendants.*

1163 No. 993. In the United States Circuit Court, District of Utah.

The United States of America, complainant, versus Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, The Farmers' Loan & Trust Company, Edward H. Harri-man, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

Joint and several answer of Jacob H. Schiff and Otto H. Kahn to the original petition of the United States of America.

CRAYATH, HENDERSON & DE GERSDORFF,  
*Attorneys for Defendants Schiff and Kahn.*  
PAUL D. CRAYATH,  
P. L. WILLIAMS,  
*Of Counsel.*

(Filed May 13, 1908.)

1164

United States Circuit Court, District of Utah.

No. 993. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, The Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

1165 The joint and several answer of the defendants Jacob H. Schiff and Otto H. Kahn to the original petition of the United States of America.

These defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefit and advantages of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained, for their joint and several answer thereunto, or to so much and such parts thereof as they are advised it is material or necessary for them to make answer unto, answering, say:

I. These defendants deny that they or either of them ever knowingly violated the provisions of an act of Congress approved July 2nd, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies." They deny all the allegations of the petition, charging that they or either of them were connected with or concerned in any combination or conspiracy which had for its object the restraint of trade and commerce among the several States or between the said States and foreign countries or any unlawful combination or arrangement of any kind whatsoever  
1166 between the defendant Union Pacific Railroad Company and the defendant Southern Pacific Company or affecting any portion or portions of the system of said Union Pacific Railroad Company and any portion or portions of the system of said Southern Pacific Company, or any railroad companies or railroad lines whatsoever. They aver that all of the transactions between the firm of Kuhn, Loeb & Co. and said Union Pacific Railroad Company or the Oregon Short Line Railroad Company alleged in the petition, in so far as such transactions occurred, were, so far as said firm of Kuhn, Loeb & Co. and these defendants were concerned, in the ordinary

course of their business as bankers, and were not part of or in any manner connected with any conspiracy or combination of any kind whatsoever between the said firm of Kuhn, Loeb & Co. or these defendants or either of them and any other person or persons or corporation or corporations whatsoever. They aver that in voting as directors of said Union Pacific Railroad Company, and in the case of the defendant Kahn, as a member of the executive committee of the board of directors of said company, in favor of any transactions on the part of said company, they so voted because they deemed such transactions to be lawful and advantageous to said company; 1167 and they aver that in all their actions as directors of said company they were guided solely by their best judgment as to the best interests of said company. They aver that they and the firm of Kuhn, Loeb & Co. have voted such shares of stock of The Union Pacific Railroad Company as they from time to time have held in such manner as seemed to them to be for the best interests of the company and its shareholders. They aver that on February 26, 1906, both of these defendants resigned from the board of directors of the Union Pacific Railroad Company; that such resignations were duly accepted by the board of directors of said company on April 10, 1906; and that since said resignations they have had no connection with or voice in the management of said company or of any of the other railroad companies mentioned in the petition; and for that reason these defendants aver that they are not proper parties defendant to this suit. And further answering the petition these defendants say:

II. They admit that the defendant Jacob H. Schiff was a director of said Union Pacific Railroad Company from March 1, 1898, until February 26, 1906, when he resigned; and that the defendant Otto H. Kahn became a director of said company on July 1, 1897, and 1168 a member of the executive committee of the board of directors of said company on December 8, 1897, and continued to be a director of said company and a member of said committee from said respective dates until February 26, 1906, when he resigned.

III. They admit that during all of the period alleged in the petition the defendants Jacob H. Schiff and Otto H. Kahn were, and still are, members of a banking firm doing business in the city of New York under the firm name and style of Kuhn, Loeb & Co., and they admit that many, although by no means all, of the purchases and sales of shares of stock and bonds mentioned in said petition were made from or to or through the instrumentality of said firm; but they deny that said firm of Kuhn, Loeb & Co. were ever appointed as or held the office of "fiscal agent" of said Union Pacific Railroad Company, and they deny that while these defendants were members of its board of directors said company appointed any person, partnership, or corporation as its fiscal agent or agents.

They deny that during the time when they were directors of said company, or when either of them was a director thereof, the 1169 by-laws of said Union Pacific Railroad Company respecting the power of the executive committee of its board of directors and the power and authority of the chairman of said executive committee were in the form or of the legal effect alleged in Subdivision II of the petition; and for the provisions of said by-laws in respect of the power and authority of the executive committee and the chairman of the executive committee during said period these defendants respectfully refer to the records of said corporation.

They deny that, pursuant to the by-laws of said corporation or otherwise, the defendant Harriman at any time while these defendants were directors, or either of them was a director, of said Union Pacific Railroad Company, with or without a concurrence and assistance of the individual defendants in this suit, other than defendant Clark, who were members of the executive committee or the board of directors of said company, dominated the affairs and controlled the management of said company, and they allege that while these defendants were members of the board of directors of said corporation its by-laws in respect to the powers and duties of its officers 1170 were such as are usually adopted by large railroad corporations. They have no knowledge as to the control of the management of said company or as to its by-laws since they ceased to be directors thereof.

IV. They deny that from and after January 1, 1901, or at any time, they, or either of them, and the defendants, Edward H. Harriman and James Stillman, together with Henry H. Rogers and Henry C. Frick, or any of them, or with any other person or persons who joined with them, have owned or controlled a majority of the capital stock of the defendant Union Pacific Railroad Company.

They admit that the said Edward H. Harriman was the chairman of the executive committee of the board of directors of said Union Pacific Railroad Company from January 1, 1901, to February 26, 1906, when these defendants resigned as directors thereof, and that he was the president of said corporation from January, 1904, to said February 26, 1906; they are informed and believe that the said Harriman, since said February 26, 1906, has been and still is the chairman of said board of directors and the president of said corporation.

V. They admit the ownership by said Union Pacific Railroad Company, Oregon Short Line Railroad Company, the 1171 Oregon Railroad and Navigation Company, and Southern Pacific Company, respectively, of capital stock of other companies, as alleged in subdivision III of the petition, from January 1, 1901, to February 26, 1906, when these defendants resigned as directors of said Union Pacific Railroad Company; but they deny that ever prior

to said February 26, 1906, said Union Pacific Railroad Company managed said Oregon Short Line Railroad Company or the said Oregon Railroad and Navigation Company. They deny that said Union Pacific Railroad Company controlled said corporations or either of them except to the extent of voting its stock in said corporations for the election of members of their boards of directors, but these defendants aver that each of those companies controlled and managed its own railroads and other property in its own name and by its own officers and agents.

These defendants have no knowledge or information sufficient to form a belief as to the allegations of Subdivision III of the petition respecting alleged competition between the various companies; but they aver that, if there was any competition between any railroad lines or steamship lines alleged to be controlled by the Southern Pacific Company and the lines alleged to be controlled by the Union Pacific Railroad Company, such competition was not of such a character as to render illegal the acquisition of stock of the Southern Pacific Company by the Union Pacific Railroad Company or by the Oregon Short Line Railroad Company.

VI. They deny that in the spring of 1901, or at any other time, they, or either of them, and the defendants Harriman, Stillman, and Union Pacific Railroad Company, or any of them, conspired to restrain the trade and commerce among the several States and between said States and foreign countries, carried on by said Union Pacific Railroad Company and said Southern Pacific Company or any other company, or to monopolize or attempt to monopolize any such trade and commerce, or to restrain or prevent competition among said railway systems or any other railway systems, and said steamship lines or any other steamship lines, in respect to any such trade and commerce; or to deprive the public of the facilities and advantages in the carrying on of such interstate and foreign trade and commerce through the independent competition, if any there was, of said railway systems and steamship lines or other railway systems or steamship lines; or that they or either of them and the said defendants or any of them ever entered into a combination or conspiracy to effect a virtual or substantial consolidation of said Union Pacific Railroad Company and any other transcontinental railway companies or steamship companies, or to place restraint upon any competitive commerce, if any such there was, carried on by such companies, or to monopolize or attempt to monopolize the same, or to suppress any competition existing between any of said companies or lines by the means alleged in the petition or otherwise.

They admit that in February, 1901, said firm of Kuhn, Loeb & Co. acquired 750,000 shares of the capital stock of said Southern Pacific Company, of the aggregate par value of \$75,000,000, out of 1,978,399

shares, of the aggregate par value of \$197,839,900, then issued and outstanding, with the expectation of offering to said Union Pacific Railroad Company an opportunity of purchasing said shares of stock; they admit that said firm subsequently sold said stock to said Union Pacific Railroad Company (these defendants not voting upon the purchase as directors of said Union Pacific Railroad Company), but they deny that the said stock was acquired or sold by said 1174 firm in pursuance of any conspiracy or combination or for any of the purposes alleged in said petition.

They admit that thereafter, to wit, on or about the 31st day of May, 1902, said Kuhn, Loeb & Co. sold to defendant Oregon Short Line Railroad Company 150,000 additional shares of stock of said Southern Pacific Company; but they deny that the said additional shares were acquired or sold by said firm in pursuance of any conspiracy or combination or for any of the purposes alleged in the petition.

They admit that thereafter, to wit, in 1904, defendant Southern Pacific Company created an issue of preferred stock which it offered to its stockholders for subscription pro rata at par, but they deny that these defendants, or either of them, and the defendants Harri- man, Stillman, and said Union Pacific Railroad Company, or any of them, caused said issue of preferred stock. They admit that said Oregon Short Line Railroad Company, as the owner of 900,000 shares of the common stock of said Southern Pacific Company, exercised its right and subscribed for and received 180,000 shares of the preferred stock of said Southern Pacific Company of the par value of \$18,000,000.

They deny that the said preferred stock was issued by said 1175 Southern Pacific Company or that any of the common or preferred stock of said company was acquired by said Oregon Short Line Railroad Company or the Union Pacific Railroad Company in pursuance of any combination or conspiracy with which either of these defendants was in any way connected, or for any of the purposes or with the intent on the part of these defendants or either of them as alleged in said petition.

They deny that ever, prior to February 26, 1906, when these defendants resigned as directors of said Union Pacific Railroad Company, said Union Pacific Railroad Company or said Oregon Short Line Railroad Company controlled the management, operation, or business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as may have resulted from the voting upon the stock of said Southern Pacific Company owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern Pacific Company. They have no knowledge or information sufficient to form

a belief as to whether said companies have, or either of them has, controlled the management or operation or business affairs of said Southern Pacific Company at any time since said date.

They admit that at the annual meetings of the stock-  
1176 holders of the Southern Pacific Company from the time the stock was so acquired and owned by said Oregon Short Line Railroad Company until February 26, 1906, when these defendants resigned as directors of said Union Pacific Railroad Company, such stock constituted a majority of the shares represented at such meetings, though not a majority of the entire capital stock of said company; and they admit that by voting upon the said shares, through its duly authorized agents and proxies, aided by the votes upon other shares owned by a large number of other stockholders of said Southern Pacific Company, the defendant Oregon Short Line Railroad Company was able to elect the directors of said Southern Pacific Company; but they aver that at none of said meetings were any votes cast by any stockholder against the persons so elected. They have no knowledge or information sufficient to form a belief as to the voting of said stock since said February 26, 1906.

They deny that the stock of the Southern Pacific Company so acquired and owned by defendant Oregon Short Line Railroad Company ever was or is voted at the dictation or instance of these defendants, or either of them, or at the dictation or instance of  
1177 these defendants, or either of them, acting in concert with said Union Pacific Railroad Company, Harriman, and Stillman, or any of them; or that said stock was ever voted for the purposes or ends alleged in Subdivision IV of the petition; and they deny that the directors of said Southern Pacific Company have ever been selected or caused to be elected by them, or either of them, or by them, or either of them, acting in concert with others.

They deny that competition between said Union Pacific Railroad and Southern Pacific Company with their steamship lines as set forth in the petition or otherwise, if any such competition ever existed, has been destroyed or that any interstate or foreign commerce which at any time was the subject of competition was ever, while these defendants were directors of said Union Pacific Railroad Company, monopolized in the hands or under the control of said company and subsidiary corporations and its officials, or any of them.

They deny each and every allegation of Subdivision IV of the petition respecting these defendants and each every allegation therein respecting any conspiracy or combination between these defendants, or either of them, and said Harriman, Stillman, and Union Pacific

Railroad Company, or any of them, for any of the purposes  
1178 or with any of the intents or results alleged.

VII. They deny that they, or either of them, and the said Harriman, Stillman, Union Pacific Railroad, or any of them, in the spring of 1901 or at any other time, caused the Union Pacific Railroad Company to acquire a majority of the stock of the Northern Pacific Railway Company, or any other amount thereof, pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign nations, or to monopolize or attempt to monopolize such trade and commerce, or to suppress any competition; and they deny all the allegations of Subdivision V of the petition respecting any conspiracy or combination for any purpose between these defendants, or either of them, and any of the defendants to this suit.

They admit that in the year 1901 said Oregon Short Line Railroad Company purchased \$37,023,000 par value of the common stock and \$41,085,000 par value of the preferred stock of the Northern Pacific Railway Company, and that at the time of such purchase the total stock of the Northern Pacific Railway Company issued and outstanding was of the aggregate par value of \$155,000,000; but 1179 they deny that such purchase was in pursuance of any conspiracy or combination or for any of the purposes alleged in the petition.

They admit the incorporation of the Northern Securities Company, and also the retirement of the preferred stock by an additional issue of common stock of the Northern Pacific Railway Company as alleged in said petition.

They admit the sale and transfer of said stock to the Northern Securities Company, and the receipt by said Oregon Short Line Railroad Company of \$82,491,871 par value of the stock of said Northern Securities Company represented by certificates issued in the name of said Harriman and of Winslow S. Pierce, who was at that time general counsel of defendant Union Pacific Railroad Company, and they admit that neither the said Harriman nor the said Pierce had any personal interest in said shares; but they deny that said sale was caused by these defendants or either of them, or by them or either of them acting with any other parties, and they deny that said stock of the Northern Securities Company was held by said Harriman and Pierce, pursuant to any conspiracy to which these defendants were parties, or either of them was a party.

They admit the commencement of a suit by the United 1180 States of America against said Northern Securities Company and others, and the decision of said suit as alleged in the petition.

They admit the commencement thereafter of a suit by defendants Harriman and Oregon Short Line Railroad Company, and the said Winslow S. Pierce and the Equitable Trust Company of New York,



as alleged in the petition; and they admit that the relief sought by the complainants in said suit was denied by the decrees entered therein. But they aver that the courts by said decrees approved the distribution by the Northern Securities Company of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company complained of by defendant Oregon Short Line Railroad Company and its copetitioners in said suit; and that as a result of said distribution, and of the approval of the same in said suit, the defendant Oregon Short Line Railroad Company during the year 1904 received from the Northern Securities Company, as the interest and share of said Oregon Short Line Railroad Company of the assets so distributed, 281,828 shares, being 18.18 per cent of the capital stock of the Northern Pacific Railway Company; and 216,520 shares, being 17.32 per cent of the capital stock of the Great Northern Railway Company; and that no doubt as to the right of

1181 said Oregon Short Line Railroad Company to so receive and hold the said shares was intimated by any of the courts in such suit. They deny that they were parties, or either of them was a party, to said suit, and deny that they, or either of them, in any way opposed or protested against any proposed distribution of shares by said Northern Securities Company as alleged in the petition.

They aver that defendant, Oregon Short Line Railroad Company, upon the final decision of said suit, proceeded from time to time to sell the stock of the Northern Pacific Railway Company and of the Great Northern Railway Company, so received by it, as sales could be advantageously effected; but they have no knowledge or information sufficient to form a belief as to what amount of said stock has been disposed of by said Oregon Short Line Railway Company or what amount thereof, if any, it owned at the date of the commencement of this suit or now owns; they deny that said Oregon Short Line Railway Company ever held or now holds any stocks as the agent or representative of these defendants, or either of them, or of any conspirators of whom either of these defendants was one, or pursuant to any conspiracy to which these defendants were parties or either of them was a party.

1182 They deny that they, or either of them, and the said Harriman, Stillman, and Union Pacific Railroad Company, or any other persons associated with them, caused the said suit of Harriman, Pierce, Oregon Short Line Railroad Company and Equitable Trust Company of New York against said Northern Securities Company to be prosecuted for the purpose of effectuating any conspiracy to restrain trade and commerce or to smother competition or monopolize any trade or commerce as in said petition alleged.

They deny each and every allegation of said subdivision V of the petition not herein expressly admitted or respecting which they

have not stated that they have no knowledge or information sufficient to form a belief.

VIII. They have no knowledge or information sufficient to form a belief as to when or by whom or for what purpose or purposes the defendant, San Pedro, Los Angeles and Salt Lake Railroad Company, was incorporated, or as to what line or lines of railway it had acquired or was engaged in constructing prior to the year 1902.

They deny that they, or either of them, for the purpose of restraining trade and commerce among the States and with foreign  
1183 nations, and monopolizing the same, or of preventing competition, or for any other purpose, brought any suit or suits or were concerned in bringing any suit or suits in the courts for the purpose of harassing or injuring the said San Pedro, Los Angeles and Salt Lake Railroad Company, or for any other purposes alleged in subdivision VI of said petition; and they deny that they made or were concerned in the making of any threats or caused any interference as in said subdivision alleged.

They deny that the contracts referred to in Subdivision VI of said petition, alleged copies of which are annexed thereto and marked, respectively, Exhibits "A" and "B", were entered into for the purpose alleged in said subdivision, and they deny that the consummation of said contracts had the results in said subdivision alleged.

They deny that they were parties, or either of them was a party, to any combination, confederation, or conspiracy for the purposes mentioned in the said subdivision or any of them; and they deny each and every allegation in said subdivision contained respecting these defendants.

IX. They deny that pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign  
1184 nations or to monopolize or attempt to monopolize any such trade and commerce or to restrain or prevent competition among any of said railway systems, they, or either of them, and the defendants, Harriman, Stillman, Rogers, and Frick, or any of them, in the year 1904 or at any other time, made large purchases of stock of the Atchison, Topeka and Santa Fe Railway Company, aggregating \$30,000,000, par value, of said stock or any other amount; and they deny that they, or either of them, at any time demanded of or were concerned in or took part in any demand upon any officials of said The Atchison, Topeka and Santa Fe Railway Company that any of the defendants herein, or any other person or persons, should be elected directors of said company.

They deny that the defendants Frick and Rogers were elected directors of the Atchison, Topeka and Santa Fe Railway Company pursuant to any demand made by these defendants, or either of them,

or pursuant to any conspiracy to which the defendants were parties, or either of them was a party, or for any other reason alleged in Subdivision VII of the petition herein.

They deny that in the summer of 1906 they, or either of them, caused or were concerned in causing the Union Pacific  
1185 Railroad Company or Oregon Short Line Railroad Company to purchase \$10,000,000, par value, or any other amount of the stock of the Atchison, Topeka and Santa Fe Railway Company, and have no knowledge or information sufficient to form a belief as to the purposes of the Union Pacific Railroad Company or Oregon Short Line Railroad Company in making any purchase of stock of said Atchison, Topeka and Santa Fe Railway Company, which it may have made.

They have no knowledge or information sufficient to form a belief as to the course which has been pursued by the Atchison, Topeka and Santa Fe Railway Company in respect to the matters alleged in said Subdivision VII of the petition or as to the allegations of competition between the system of railways alleged to be controlled by the Union Pacific Railroad Company and said Atchison, Topeka and Santa Fe Railway Company, or any elimination thereof, if such competition ever existed.

They deny that any of the acts or transactions alleged in Subdivision VII were the result of any conspiracy, combination, or contract to restrain commerce among the several States and with foreign  
1186 countries, or were done or occurred in pursuance of any conspiracy or combination for any purpose to which these defendants were parties or either of them was a party; and they deny each and every allegation of said Subdivision VII respecting these defendants.

X. They allege that, so far as practicable, they have confined this answer to the allegations of the petition which related to the matters and things of which these defendants have knowledge or with which they had some connection, either individually or as directors of the Union Pacific Railroad Company. As to the other allegations of the petition, they have refrained from making either admissions or denials thereon, and pray that the complainant be put upon proof of each and all of the same, if such other allegations be material or pertinent to any inquiry before this court as regards these defendants.

XI. And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are in the said petition charged; without that any other matter, cause, or thing in the said petition contained, material or necessary for these defendants to  
1187 make answer unto, and not herein and hereby well and sufficiently answered unto, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants,

all of which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

JACOB H. SCHIFF,

OTTO H. KAHN,

*Defendants.*

By CRAVATH, HENDERSON & DE GERSDORFF.

*Their Solicitors.*

PAUL D. CRAVATH,

P. L. WILLIAMS.

*Of Counsel.*

1188 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. the Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of Edward H. Harriman. (Filed May 4, 1908.)

1189 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of Edward H. Harriman, one of the defendants in the above-entitled action.

1190 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of Edward H. Harriman, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other

matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,

*United States Attorney, Solicitor for Complainant.*

C. A. SEVERANCE,

FRANK B. KELLOGG,

*Of Counsel.*

Received a copy of above replication this 4th day of May, 1908.

P. L. WILLIAMS,

*Attorney for Edward H. Harriman.*

1191 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of the Southern Pacific Company. (Filed May 4, 1908.)

1192 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of the Southern Pacific Company, one of the defendants in the above-entitled action.

1193 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the Southern Pacific Company, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that

any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct; and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,  
*United States Attorney, Solicitor for Complainant.*

C. A. SEVERANCE,  
FRANK B. KELLOGG,  
*Of Counsel.*

Received a copy of the above replication this 4th day of May, 1908.

P. L. WILLIAMS,  
*Attorney for Southern Pacific Company.*

1194 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the joint answer of the Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company. (Filed May 4, 1908.)

1195 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, v. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of The United States of America, complainant, to joint answer of Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, three of the defendants in the above-entitled action.

1196 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said

answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company, three of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true. All of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays, as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,

*United States Attorney, Solicitor for Complainant.*

1197

C. A. SEVERANCE,

FRANK B. KELLOGG,

*Of Counsel.*

Received a copy of the foregoing replication this 4th day of May, A. D. 1908.

P. L. WILLIAMS,

*Attorney for Union Pacific Railroad Company,*

*Oregon Short Line Railroad Company, and*

*Oregon Railroad and Navigation Company.*

1198 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of William A. Clark and the San Pedro, Los Angeles and Salt Lake Railroad Company. (Filed May 4, 1908.)

1199 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, the Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harri-

man, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of William A. Clark and the San Pedro, Los Angeles and Salt Lake Railroad Company, two of the defendants in the above-entitled action.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the San Pedro, Los Angeles & Salt Lake Railroad Company and William A. Clark, two of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,

*United States Attorney, Solicitor for Complainant.*

C. A. SEVERANCE,

FRANK B. KELLOGG,

*Of Counsel.*

1201 Received a copy of the above replication this 4th day of May, 1908.

PENNEL CHERRINGTON,

*Attorney for San Pedro, Los Angeles &*

*Salt Lake Rd. Co. and William A. Clark.*

1202 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of the Farmers' Loan & Trust Company. (Filed May 4, 1908.)

1203 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka &



Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harri-man, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.  
No. 993. Replication.

The replication of the United States of America, complainant, to the answer of the Farmers' Loan & Trust Company, one of the defendants herein.

1204 This repliant saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that said answer of the Farmers' Loan & Trust Company, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,  
*United States Attorney, Solicitor for Complainant.*  
C. A. SEVERANCE,  
FRANK B. KELLOGG,  
*Of Counsel.*

Received a copy of the above replication this 4th day of May, 1908.

P. L. WILLIAMS,  
*Attorney for Farmers' Loan & Trust Company.*

1205 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. the Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of Henry C. Frick.  
(Filed May 4, 1908.)

1206 In the Circuit Court of The United States for the District of Utah.

The United States of America, complainant, vs. The Union Pacific Railroad Company; the Oregon Short Line Railroad Company; The Oregon Railroad and Navigation Company; the San Pedro,

Los Angeles & Salt Lake Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Edward H. Harriman; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers; Henry C. Frick; and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of Henry C. Frick, one of the defendants in the above-entitled action.

1207 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of Henry C. Frick, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,

*United States Attorney, Solicitor for Complainant.*

C. A. SEVERANCE,

FRANK B. KELLOGG,

*Of Counsel.*

Received a copy of above replication this 4th day of May, 1908.

P. L. WILLIAMS,

*Attorney for Henry C. Frick.*

1208 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of The Atchison, Topeka & Santa Fe Railway Company. (Filed May 4, 1908.)

1209 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los

Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harri-  
man, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of The Atchison, Topeka & Santa Fe Railway Company, one of the defendants in the above-entitled action.

1210 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of The Atchison, Topeka & Santa Fe Railway Company, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,

*United States Attorney, Solicitor for Complainant.*

C. A. SEVERANCE,

FRANK B. KELLOGG,

*Of Counsel.*

Received a copy of above replication this 4th day of May, 1908.

P. L. WILLIAMS,

*Attorney for Atchison, Topeka & Santa Fe Railway Company.*

1211 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of Henry H. Rogers.  
(Filed May 25, 1908.)

1212 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company; The Oregon Short Line Railroad Company; The Oregon Railroad and Navigation Company; The San Pedro, Los

Angeles & Salt Lake Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Edward H. Harri-man; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers; Henry C. Frick; and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of Henry H. Rogers, one of the defendants in the above-entitled action.

1213 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said Henry H. Rogers, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material, or effectual to be replied unto, confessed and avoided, traversed, or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,

*United States Attorney, Solicitor for Complainant.*

C. A. SEVERANCE,

FRANK B. KELLOGG,

*Of Counsel.*

Received a copy of above replication this 25th day of May, 1908.

P. L. WILLIAMS,

*Attorney for Henry H. Rogers.*

1214 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of James Stillman.  
(Filed May 25, 1908.)

1215 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los

Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harri-man, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of James Stillman, one of the defendants in the above-entitled action.

1216 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of James Stillman, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,  
*United States Attorney,  
Solicitor for Complainant.*

C. A. SEVERANCE,  
FRANK B. KELLOGG,

*Of counsel.*

Received a copy of the above replication this 25th day of May, 1908.

P. L. WILLIAMS,  
*Attorney for James Stillman.*

1217 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of Jacob H. Schiff and Otto H. Kahn. (Filed May 25, 1908.)

1218 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los

Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of The United States of America, complainant, to the joint and several answer of Jacob H. Schiff and Otto H. Kahn, two of the defendants in the above entitled action.

1219 This repliant saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill, to be true, certain, and sufficient in the law to be answered unto, and that the said joint and several answer of Jacob H. Schiff and Otto H. Kahn, two of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,  
*United States Attorney, Solicitor for Complainant.*

C. A. SEVERANCE,  
FRANK B. KELLOGG,  
*Of Counsel.*

1220 Received a copy of the above replication this 25th day of May, 1908.

P. L. WILLIAMS,  
*Attorney for Jacob H. Schiff and Otto H. Kahn.*

1221 DEFENDANTS' EXHIBIT No. 50 (PART B), APRIL 16, 1915.

Opinion and decree of the United States Circuit Court for the District of Utah in the Union Pacific Merger suit, dated June 24, 1911.

Pursuant to stipulation at page 1928 of the testimony, this opinion and decree need not be copied into the record, but may be referred to as reported in the 188th Federal Reporter, page 102 and following.

## 1222 DEFENDANTS' EXHIBIT No. 50 (PART C), APRIL 16, 1915.

Opinion and decree of the United States Supreme Court rendered December 2, 1912, in the Union Pacific merger suit.

Pursuant to stipulation at page 1928 of the testimony, this opinion and decree need not be copied into the record, but may be referred to in volume 226 of the United States Reports at page 61 and following.

## 1223 DEFENDANTS' EXHIBIT No. 50 (PART D), APRIL 16, 1915.

Supplemental opinion and decree of the United States Supreme Court, rendered January 6, 1913, upon the motion as to form of mandate in the Union Pacific merger suit.

Pursuant to stipulation at page 1928 of the testimony, this supplemental opinion and decree need not be copied in the record, but may be referred to in volume 226 of United States Reports at page 470 and following.

## 1224 DEFENDANTS' EXHIBIT No. 50 (PART E), APRIL 16, 1915.

In the District Court of the United States for the District of Utah.

United States of America, complainant, v. The Union Pacific Railroad Company; The Oregon Short Line Railroad Company; The Oregon Railroad & Navigation Company; The San Pedro, Los Angeles & Salt Lake Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; The Farmers' Loan & Trust Company; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry C. Frick; William A. Clark; and Robert S. Lovett, as trustee, defendants. No. ———.

## 1225

## Decree.

The above-entitled cause having duly come on for hearing before this court, and having been determined adversely to the complainant, and the said cause having been appealed to the Supreme Court of the United States, by which court the decree of this court dismissing the said bill of complaint was in part reversed, and a mandate from the Supreme Court in proper form containing directions as to the decree to be entered herein having been filed here on the 12th day of February, 1913.

Now, therefore, this cause came on to be further heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

SECTION 1. That the final decree entered herein on June 24, 1911, dismissing the bill be set aside so far as the same was reversed by the Supreme Court.

SEC. 2. That prior to the year 1901, and ever since said date, the defendant Union Pacific Railroad Company has controlled, by the ownership of substantially all the stock thereof, the defendant Oregon

Short Line Railroad Company; and that the defendant Ore-  
1226 gon Short Line Railroad Company, by the ownership of sub-

stantially all the stock thereof, has controlled the defendant Oregon Railroad & Navigation Company, which latter company has controlled, and still does, through the ownership of all the stock thereof, control the Portland & Asiatic Steamship Company; and that in the year 1901, and for several years prior thereto, said Oregon Railroad & Navigation Company had been the owner and engaged in the operation of a line of steamships between Portland, Oregon, and San Francisco, California; that it continued in the operation of the same until about the year 1904, when a corporation was organized, of which said Oregon Railroad & Navigation Company then was and still is the sole stockholder, known as the San Francisco and Portland Steamship Company, which took over the said line of ships between San Francisco and Portland, and has since been operating the same in connection with the rail lines of said Oregon Railroad & Navigation Company; and that the lines of railway and steamships of said corporations were, prior to 1901, and ever since have been, controlled and managed in all respects by the defendant Union Pacific Railroad Company; and that prior to the year 1901, and continuously since  
1227 that date, the said defendant Union Pacific Railroad Company and its subsidiary corporations owned, controlled, and managed by it, have owned and have been engaged in the operation of a system of railroad and steamship lines.

SEC. 3. That the defendant Southern Pacific Company controls, by direct ownership, stock ownership, and lease a system of rail and steamship lines, and also by the ownership of a majority of its stock has, during all of said time, controlled the Pacific Mail Steamship Company, which is engaged in transportation business between the port of San Francisco and various ports in China and Japan, which ports in China and Japan were also served by said Portland and Asiatic Steamship Company.

SEC. 4. That the Central Pacific Railroad Company was organized under the laws of California, and constructed a line of railroad from Sacramento, California, to Ogden, Utah.



That the Western Pacific Railroad Company was organized under the laws of California, and constructed a line of railroad from San Francisco to Sacramento, California, and that these two latter corporations were afterwards consolidated into and became the Central Pacific Railroad Company, which was for many years engaged in the operation of said line of railroad from San Francisco to 1228 Ogden, at which point it connected with the main line of said Union Pacific Railroad Company.

That the said Southern Pacific Company was and is also the owner of all the capital stock of the Central Pacific Railway Company, a corporation organized and existing under the laws of Utah, which succeeded to the ownership of the line of railway from Ogden to San Francisco theretofore owned by the Central Pacific Railroad Company, hereinbefore particularly described; and by virtue of such ownership of all said capital stock said Southern Pacific Company in all respects controls the operation and management of the affairs and business of said Central Pacific Railway Company.

That the railways and properties formerly belonging to the said Central Pacific Railroad Company were, by indenture and agreement dated July 28, 1899, conveyed to the said Central Pacific Railway Company.

That prior thereto and on or about the 17th day of February, 1885, the said Central Pacific Railroad Company leased to the said Southern Pacific Company all of its railroad and properties for a period of ninety-nine years, which lease was thereafter modified by agreements between the parties dated the first day of January, 1229 1888, and the 7th day of December, 1893, dated respectively, and the 22d day of March, 1894, and that the railroads of the said Central Pacific Railroad and said Central Pacific Railway were controlled and operated by the said Southern Pacific Company, and thereafter, and in or about the month of March, 1901, said Southern Pacific Company passed under the control of the Union Pacific Railroad Company as hereinbefore specified.

SEC. 5. That prior to the year 1901 the said systems of rail and steamship lines of the defendant Union Pacific Railroad Company and the defendant Southern Pacific Company and different portions of the same were, and but for the suppression of competition hereinafter mentioned would still be, active competitors for the transportation of large quantities of freight and passengers between the Atlantic seaboard and the Pacific coast and between various other points. That the railroad and steamship lines of said Union Pacific Railroad Company's system and said Southern Pacific Company's system are natural competitors.

SEC. 6. That in the spring of 1901 the said defendants, Jacob H. Schiff, Otto H. Kahn, and James Stillman, together with one Edward

H. Harriman, who was originally a defendant in this cause, 1230 but who has died during the pendency thereof, for the purpose of enabling the Union Pacific Railroad Company to acquire control of the railroad system of the Southern Pacific Company and thereby to form the combination herein described, caused to be acquired for transfer to the Union Pacific Railroad Company, and said company thereupon, in consummation of said plan, acquired 750,000 shares of the stock of said Southern Pacific Company of the par value of \$75,000,000 out of a total issue of 1,978,477 shares of the aggregate par value of \$197,847,788 then issued and outstanding (said shares being delivered to said defendant Union Pacific Railroad Company on or about March 4, 1901), so that the same might be held in the treasury of said company and voted by it for the purpose and with the intention of controlling the election of the board of directors and officers of the said Southern Pacific Company and eliminating the competition that had theretofore existed between said Union Pacific system and said Southern Pacific system.

That the said shares of stock were afterwards transferred to the Oregon Short Line Railroad Company, to be held for the use and benefit of said Union Pacific Railroad Company. That thereafter for the purpose of strengthening and completing said combination 1231 the Union Pacific Railroad Company acquired from time to time additional shares of the capital stock of the Southern Pacific Company and turned the same over to the Oregon Short Line Railroad Company to be held for the use and benefit of the Union Pacific Railroad Company, until the Oregon Short Line Railroad Company had acquired and now owns and holds 1,266,500 shares of the capital stock of said Southern Pacific Company out of a total of 2,726,724 shares issued and outstanding, or about 46% thereof.

That at each and every annual meeting of the stockholders of the Southern Pacific Company for the election of directors since said 750,000 shares of stock were so acquired the stock so held by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company has constituted a majority of the shares represented at such meetings, and the directors of said Southern Pacific Company have been chosen by the vote of such stock.

That the balance of the stock of said Southern Pacific Company is scattered among a large number of stockholders, and that by reason of the fact that such stock is so scattered the full amount of the same is not and never has been voted at any meeting, for which reason the said stock of the Southern Pacific Company so controlled by said Oregon Short Line Railroad Company has 1232 constituted a majority of the stock of said Southern Pacific Company at the meetings of the stockholders thereof, and by reason of said stock ownership the said Union Pacific Railroad Company

and its said subsidiary corporation have controlled said Southern Pacific Company, and in the case of a large corporation of the character of the Southern Pacific Company a compact, united ownership of 46% of the stock is ample to control the operations of the corporation.

That since April 3, 1901, members of the board of directors of the Union Pacific Railroad Company have constituted a majority of the board of directors of said Southern Pacific Company.

That for several years last past the Union Pacific Railroad Company and its subsidiary lines and said Southern Pacific Company have had common traffic officials, operating officials, purchasing agents, and commercial agents, and the said lines of railway and steamships of said respective systems have been and are operated as a single system, and the competition that formerly existed between the said two railway systems with their steamships has been destroyed, and the interstate and foreign commerce which was  
1233 formerly the subject of competition between said two systems has been in the hands and under the control of said Union Pacific Railroad Company and its subsidiary corporations and their officials.

SEC. 7. That the stocks of the Southern Pacific Company were acquired and are held by the Oregon Short Line Railroad Company by virtue of an unlawful combination to restrain trade and commerce and eliminate the competition herein described.

SEC. 8. That the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company, acting directly or through their respective officers, boards of directors, executive committees, agents, servants, or through any other person, firm, or corporation, acting for or in the interest of said companies, are hereby perpetually enjoined from purchasing, acquiring, receiving, holding, voting, whether by proxy or otherwise, or in any manner acting as the owner of any of the shares of the capital stock of the Southern Pacific Company.

SECTION 9. That the defendant Southern Pacific Company, its officers, directors, servants, and agents, and all persons acting by, through, or under it, be, and they are hereby, respectively and collectively, enjoined from permitting the stock aforesaid to be  
1234 voted by the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, or in their behalf by their attorneys or agents or the attorneys or agents of either of them, at any meeting of the stockholders of said railway company; and said Southern Pacific Company, together with its officers, directors, servants, and agents, are likewise enjoined and respectively restrained from paying any dividends to said Union Pacific Railroad Company

or the Oregon Short Line Railroad Company, or to any person for them or either of them on account of stock in said Southern Pacific Company, which the said Oregon Short Line Railroad Company now claims to own and hold, and from paying any dividends on said stock while thus held, except to a receiver to be appointed by this court to collect and hold such dividends until disposed of by the decree of this court; and said Southern Pacific Company, its officers, directors, servants, and agents are further enjoined from permitting or suffering the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, or any of its officers or agents, from exercising any control whatsoever over the corporate acts of said Southern Pacific Company.

SECTION 10. That the defendants Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad 1235 and Navigation Company, and Southern Pacific Company, together with the officers, directors, agents, servants, employees, and all persons and corporations acting by, through, or under the corporations named in this section, are enjoined and prohibited from continuing or carrying into further effect the combination hereby adjudged illegal, either:

(a) By the use of any written evidences of a stock interest in the said Southern Pacific Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, or either of them, or by causing the conveyance of the physical property and business of the Southern Pacific Company, on the one hand, to the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad and Navigation Company, or either of them, upon the other hand, or by causing the conveyance of the physical property and business of the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad and Navigation Company, or either of them, upon the one hand, to the Southern Pacific Company, upon the other hand, or by placing the control of the Southern Pacific Company, on the one hand, and of the Union Pacific Railroad Company, 1236 the Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company, upon the other hand, in a trustee or group of trustees, or by causing the stock in said Southern Pacific Company to be held by any person for the benefit of the said Union Pacific Railroad Company, the said Oregon Short Line Railroad Company, or any person acting in their interest, or in the interest of either of them; or

(b) By making any express or implied agreement or arrangement together, or one with another, like that hereby adjudged illegal, relative to the control or management of said Southern Pacific Company

by the said Union Pacific Railroad Company, Oregon Short Line Railroad Company, or any person acting in their interest, or from causing said companies to agree as to the rates of transportation of competitive traffic, or after the first day of May, 1913, from continuing any union of management of any sort or description, either as to operation, rates, or otherwise, between the said Southern Pacific Company, on the one hand, and the said Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, on the other hand, and, after said date from electing, permitting to be elected, or continuing the same person or persons as a director or officer of both the Southern Pacific Company or any of its subsidiary companies, on the one hand, and the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company, or any of the subsidiaries of said companies, on the other hand, or by maintaining common agencies for the solicitation of traffic; but nothing herein contained shall be construed as prohibiting said railroad companies from entering into agreements for the joint carriage of through traffic, including the making of through rates and the running of through cars or trains, as well as the granting of running rights by the one company to the other and the making of other operating and traffic arrangements such as can legally be made between connecting independent railroad corporations operating under separate managements.

And the defendant corporations, their respective officers, directors, agents, servants and employees, and the individual defendants, Jacob H. Schiff, Otto H. Kahn, and James Stillman, are enjoined and prohibited from entering into any like combination to that above described, the effect of which is or may be to restrain commerce among the States or with foreign nations in violation of the act of July 2, 1890, by any of the means aforesaid.

SECTION 11. And said defendant Oregon Short Line Railroad Company is hereby further enjoined from selling, assigning, transferring, mortgaging, or pledging any of the said stock of the Southern Pacific Company, or any certificate of interest in the stock of the last-named company, to any person or corporation except as may be authorized by this court.

And the defendant Southern Pacific Company, its officers, directors, agents, and servants, and each and every one of them, are enjoined from recognizing as valid any transfer, mortgage, pledge, or assignment by said Oregon Short Line Railroad Company, of the said shares of stock of said Southern Pacific Company unless the same shall be authorized by this court.

SECTION 12. That nothing in this decree contained shall be considered as preventing the Government, or any party to this suit, from

presenting to this court plans for the acquisition or control by the Union Pacific Railroad Company of the Central Pacific Railway Company, or of its line of railroad, so far and to such extent as shall be approved by this court. Any such plan or plans shall be  
1239 filed with the clerk of this court within three months from the 12th day of February, 1913.

SECTION 13. The complainant herein is hereby granted leave at any time, by motion or by supplemental or amended bill or petition, as it may be advised, to make and bring in any additional parties, and the clerk of this court is directed to issue all the necessary and appropriate process to that end.

SECTION 14. That as directed by the said Supreme Court of the United States, the said defendants may present to this court plans for the disposition of the stock of said Southern Pacific Company, so held by said Oregon Short Line Railroad Company, within three months from the 12th day of February, 1913, the date of the filing of the mandate in this court; and the court, upon the presentation of such plans, will hear the complainant and defendants, and will bring in any additional parties whose presence may be found necessary to a final disposition of the stock in conformity with the decision of the Supreme Court. In the event that defendants shall fail to present such plans within said time, or upon the rejection by the court  
1240 of the plans submitted within such time, this court will take such further steps relative to a disposition of such stock as may be necessary to carry out the provisions of this decree, jurisdiction of the cause being retained for that purpose.

SECTION 15. The bill of complaint is hereby dismissed as to the defendants, The San Pedro, Los Angeles and Salt Lake Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; Northern Pacific Railway Company; Great Northern Railway Company; The Farmers' Loan and Trust Company; Henry C. Frick, William A. Clark, and Robert S. Lovett as trustee.

SECTION 16. That the complainant, United States of America, have and recover from the defendants, The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, Jacob H. Schiff, Otto H. Kahn, and James Stillman, its costs and disbursements, to be taxed by the court.

Dated February 12, 1913.

WALTER H. SANBORN,  
W. C. HOOK,  
WALTER I. SMITH,  
*United States Circuit Judges.*

1241 DEFENDANTS' EXHIBIT NO. 50 (PART F), APRIL 16, 1915.

In the District Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company; the Oregon Short Line Railroad Company; The Oregon Railroad & Navigation Company; The San Pedro, Los Angeles & Salt Lake Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry C. Frick; William A. Clark; Robert S. Lovett, as trustee; Central Pacific Railway Company and Southern Pacific Railroad Company, defendants.

### Final decree.

Whereas the above cause was determined by a decree of this  
1242 court entered June 24, 1911, dismissing the bill, from which complainant appealed to the Supreme Court of the United States, which, in an opinion delivered December 2, 1912, reversed the decree of this court and issued its mandate filed herein February 12, 1913, remanding the cause with instructions to enter a decree and for further proceedings in conformity with its opinion, which opinion directed, among other things, that disposition of the shares of capital stock of the defendant Southern Pacific Company found to have been unlawfully acquired by the defendant Oregon Short Line Railroad Company in the interest of the defendant Union Pacific Railroad Company "shall be made subject to the approval and decree of the district court, and any plan for the disposition of this stock must be such as to effectually dissolve the unlawful combination thus created;"

And further that "The court shall proceed, upon the presentation of any plan, to hear the Government and defendants, and may bring in any additional parties whose presence may be necessary to a final disposition of the stock in conformity to the views herein ex-  
1243 pressed."

\* \* \* \* \*

"And any plan or plans shall be presented to the district court within three months from the receipt of the mandate of this court, failing which, or upon the rejection by the court of plans submitted within such time, the court shall proceed by receivership and sale, if necessary, to dispose of such stock in such wise as to dissolve such unlawful combination."

And whereas thereupon, on February 12, 1913, this Court entered a decree adjudging that the shares of the defendant Southern Pacific

Company held by the defendant Oregon Short Line Railroad Company were acquired by virtue of an unlawful combination to restrain trade and commerce and enjoining the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company and their agents from voting or receiving dividends in respect thereof, and providing further, amongst other things, as follows:

"SEC. 14. That as directed by the said Supreme Court of the United States, the said defendants may present to this Court  
1244 plans for the disposition of the stock of said Southern Pacific Company, so held by said Oregon Short Line Railroad Company, within three months from the 12th day of February, 1913, the date of the filing of the mandate in this Court; and the Court, upon the presentation of such plans, will hear the complainant and defendants and will bring in any additional parties whose presence may be found necessary to a final disposition of the stock in conformity with the decision of the Supreme Court. In the event that defendants shall fail to present such plans within said time, or upon the rejection by the Court of the plans submitted within such time, this Court will take such further steps relative to a disposition of such stock as may be necessary to carry out the provisions of this decree, jurisdiction of the cause being retained for that purpose."

And whereas on February 12, 1913, the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company presented a plan for the disposition of the said shares which had been  
1245 approved by the Attorney General of the United States, but which was withdrawn before action thereon because of the failure of the railroad commission of the State of California to approve certain features thereof within its jurisdiction;

And whereas thereafter, with the consent of the Attorney General, the time within which to present plans was extended by the Supreme Court until July 1, 1913;

And whereas on June 5, 1913, the defendants Union Pacific Railroad Company and Oregon Short Line Railroad filed herein a petition submitting (1) a first amended plan, in substance providing for the disposition of said shares by a public subscription offering at prices and upon terms to be fixed by said defendants and with certain limitations upon the right of Union Pacific stockholders to subscribe; and (2) a second amended plan, in substance providing for the transfer of said shares to a trustee and for the offering of the trustee's nonvoting certificates of interest therein, upon terms fixed by said defendants, to Union Pacific stockholders or their assignees for subscription, which certificates of interest should be exchangeable for Southern Pacific shares upon affidavit that the applicant for such exchange owned no Union Pacific Railroad Company stock;



And whereas on June 12, 1913, the said defendants filed  
1246 a petition supplementing their first amended plan and second  
amended plan aforesaid by a proposal to sell to the Pennsylvania Railroad Company 382,924 shares of the Southern Pacific Company in exchange for 425,472 shares of the Baltimore and Ohio Railroad Company;

And whereas, by petition filed herein June 30, 1913, the said defendants withdrew all of the plans recited in the petitions then pending before the court and submitted their third amended plan;

And whereas complainant has filed an answer to said petition submitting said third amended plan:

Now, therefore, it is ordered, adjudged, and decreed:

SECTION 1. Said third amended plan is hereby approved in so far and only so far as its provisions are embodied in this decree.

SECTION 2. The defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company having asked permission to sell to the Pennsylvania Railroad Company 382,924 of the said shares of the capital stock of the defendant Southern Pacific Company, of the par value of \$38,292,400, and to accept in exchange 425,472 shares

(half preferred and half common) of the capital stock of the  
1247 Baltimore and Ohio Railroad Company, of the par value of  
\$42,547,200 (being all the stock of said company owned or controlled by the Pennsylvania Railroad Company or any of its subsidiaries), and it appearing that such sale or exchange would be a substantial step toward the effectual dissolution of the particular combination now before the court, it is hereby provided and leave is granted to effect the same: Provided, however, That neither such approval and leave nor anything contained in this decree shall ever be taken or construed as affecting the obligations, powers, rights, or duties under present or future laws of any person or corporation not a party to this cause, nor be taken or construed as an adjudication that any defendant herein has the right to acquire or hold the shares of stocks so sold or exchanged, nor as an exemption of any defendant in respect of such acquisition or holding from the operation of any law now in force or which may hereafter be enacted.

In the event of such sale immediate delivery shall be made of the said 382,924 shares of the defendant Southern Pacific Company, which is hereby directed to cause them to be transferred on its stock books to the Pennsylvania Railroad Company, upon presentation of the certificates therefor duly assigned, and thereupon to pay to  
1248 the defendant Oregon Short Line Railroad Company, on demand, the dividends appertaining to said shares heretofore declared and payable April 1 and July 1, 1913, respectively; and the transaction shall be reported to the court within 30 days from the date hereof.

SECTION 3. The Central Trust Company of New York, a corporation organized and existing under the laws of the State of New York, and hereinafter called the Trustee, having declared its submission to the jurisdiction of this court for all purposes of this cause, and having entered its appearance herein by counsel, is made a party hereto; and said Central Trust Company of New York is hereby appointed to receive and hold, as the custodian and depository of this court, subject to the provisions of this decree and to the further orders and decrees of the court herein, all shares of the capital stock of defendant Southern Pacific Company which shall be transferred to it as hereinafter provided.

SECTION 4. The shares of the defendant Southern Pacific Company held by the defendant Oregon Short Line Railroad Company remaining after the sale to the Pennsylvania Railroad Company of 382,924 shares thereof, as hereinabove provided, to wit, 883,576 shares, or the entire holdings if such sale to the Pennsylvania Railroad Company shall not be consummated within 30 days from the date hereof, shall be transferred forthwith to the Trustee and registered in its name on the books of the Southern Pacific Company, and certificates therefor delivered to the Trustee.

The defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company shall assign or cause to be assigned to the Trustee all dividends appertaining to the shares so transferred which shall have been declared and shall be then or thereafter payable to the defendant Oregon Short Line Railroad Company or the individuals holding in its behalf as the registered stockholders entitled to such dividends. Such dividends, hereinafter designated as the "accumulated dividends", shall be collected by the Trustee and held and distributed upon the terms and conditions hereinafter provided.

SECTION 5. Prior to November 1, 1913, the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company shall offer to all stockholders of the former, common and preferred (registered as such on a date to be designated in the offer and not more than 40 days from its date), or to their assignees the right to subscribe for certificates of interest representing the said 1250 Southern Pacific Company shares transferred to the Trustee as provided hereunder substantially in the proportion of their respective holdings, with such allowance in fixing the distribution ratio as the above-named defendants may deem necessary for possible conversions of convertible bonds of the said Union Pacific Railroad Company. The offering shall include all accumulated dividends appertaining to said shares, and shall be at such price and upon such other terms as the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company shall determine, except as

specifically herein prescribed or as otherwise directed by the court by a subsequent order or decree.

The subscription price shall be payable at the time of the subscription or at the option of the subscriber, \$25 per share at the time of subscription and the balance within one year thereafter, with interest on such balance at the rate of 6 per cent per annum. The subscriptions shall be filed with the Trustee.

Neither of the defendants Union Pacific Railroad Company or Oregon Short Line Railroad Company, nor any corporation controlled by either, nor any person acting in the interest of either, shall acquire by purchase or otherwise any of said certificates of interest.

1251 The defendants, Union Pacific Railroad Company and Oregon Short Line Railroad Company, may cause the sale of said certificates of interest upon such subscription offer to be underwritten, the underwriters to agree to purchase any certificates, or such an amount thereof as shall be designated in the underwriting agreement, not subscribed for pursuant to the offer.

SECTION 6. The Trustee shall execute and issue certificates of interest representing the shares transferred to it hereunder and shall deliver them at its offices in the city of New York to the subscribers therefore under section 5 hereof, upon payment in full of the subscription price and compliance in all respects with the terms prescribed by the offering, or by any subscription receipt issued under section 7 hereof, to be performed by the subscribers to entitle them to receive such certificates of interest; and in like manner shall deliver such certificates of interest upon full payment therefor to any other purchasers to whom the defendants, Union Pacific Railroad Company and Oregon Short Line Railroad Company, shall be authorized by the court to sell the same. All such certificates shall be registered by the trustee in the names of the purchasers. They shall  
1252 be substantially in the form hereto annexed, marked "Form A."

SECTION 7. The Trustee shall issue part-paid subscription receipts to all subscribers who shall elect to defer payment of the balance of the subscription price, upon payment of the aforesaid initial installment thereof and due compliance in all other respects with the terms prescribed by the offering to be performed by the subscribers at the time of the subscription; and in like manner shall deliver such subscription receipts, upon payment of such initial installment of the purchase price, to any other purchasers to whom defendants, Union Pacific Railroad Company and Oregon Short Line Railroad Company, shall be authorized by the court to sell the said certificates of interest. All such subscription receipts shall be registered by the

Trustee in the names of the purchasers. They shall be substantially in the form hereto annexed, marked "Form B."

SECTION 8. The certificates of interest and subscription receipts issued hereunder may be in the denominations of 1 share, 10 shares, 50 shares, 100 shares, and such other denominations as the Trustee shall elect. The certificates of interest and subscription receipts shall be executed on behalf of the Trustee by such officer of the  
1253 Trustee in the city of New York, or by such agent in London, England, as it shall authorize thereunto, and such certificates of interest may be countersigned by a trust company in the city of New York as registrar.

SECTION 9. The Trustee shall, if so requested by the registered owner of any subscription receipt issued hereunder and then outstanding, by application in writing presented at its office in the city of New York not less than 10 days prior to any annual or special stockholders' meeting of the Southern Pacific Company, execute and deliver to such registered owner, or to his nominee, a proxy appointing such attorneys, agents, and proxies as such registered owner shall nominate in his said application, to appear and vote at such stockholders' meeting upon the number of shares represented by said subscription receipt for the election of directors and upon any other business transacted at such meeting: Provided, however, that as a condition precedent to the issue of such proxy the applicant shall file with the Trustee at its said office, on or before the tenth day preceding such meeting, an affidavit executed as hereinafter in section

11 hereof prescribed, and in one of the forms referred to in said  
1254 section 11, except that said affidavit shall refer to and describe a subscription receipt (or receipts) owned by said applicant, instead of certificates of interest, and that there shall be substituted in the form of said affidavit for the words "for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee, in exchange for said certificate (or certificates) of interest" the words "for the purpose of procuring the issue of a proxy to vote upon the shares of the capital stock of the Southern Pacific Company held by said Trustee represented by the subscription receipt (or receipts) above described": And provided further, that the applicant for such proxy shall at the close of business on the tenth day preceding said meeting be registered on the books of the Trustee as the owner of the subscription receipt (or receipts) upon which such application is based.

The Trustee shall not be entitled to vote or issue proxies for voting in respect of any of the said shares of defendant Southern Pacific Company except as in this section provided or as may be hereafter directed by the court.

SECTION 10. So long as any of the shares of the capital stock of the Southern Pacific Company aforesaid shall be held by the  
1255 Trustee, the Trustee shall collect and receive any and all cash dividends declared by the Southern Pacific Company appertaining to the shares so held, which shall be payable to the Trustee as the registered stockholder entitled to such dividends by the terms of the declarations thereof.

Upon the conversion pursuant to section 11 hereof of any certificate of interest issued hereunder into a certificate for shares of capital stock of the Southern Pacific Company held by the Trustee, the latter shall pay in cash to the owner of the certificate of interest so converted, or upon his order, the amount of all cash dividends collected by it, including the aforesaid accumulated dividends, appertaining to the number of shares represented by such certificate of interest, but without interest thereon, and shall execute and deliver to such owner, or upon his order, a dividend order or assignment for the amount of any unmatured dividends declared in respect of such shares which shall be vested at the time of such conversion in the Trustee as the registered stockholder entitled thereto. Any interest realized or allowed by the Trustee upon funds paid to it as dividends shall be applicable to the payment of the compensation of the Trustee and the expenses of the administration of the trust, and  
any balance thereof remaining shall be paid to the defendant  
1256 Oregon Short Line Railroad Company, unless otherwise ordered by the court.

All dividends payable otherwise than in cash which shall be declared by the Southern Pacific Company shall be received and held by the Trustee for the pro rata benefit of said registered owners, from time to time, of the certificates of interest issued hereunder and outstanding, upon the same terms and conditions as the shares originally deposited, and shall be distributed to the persons who shall be the respective owners of certificates of interest when and as, and only when and as, the shares originally deposited are distributed to them respectively, subject to any necessary adjustment by scrip or otherwise, in the discretion of the Trustee, in respect of fractional shares. All subscription or other rights offered to stockholders of the Southern Pacific Company shall be immediately assigned by the Trustee pro rata to said registered owners of the certificates of interest and subscription receipts issued hereunder and then outstanding, who shall be such registered owners at the date when such rights become fixed.

No deduction shall be made by the Trustee in the distribution of such dividends or increase for any commissions or expenses of the Trustee or other cost of collection or payment.  
1257

SECTION 11. At any time upon demand, at its office in the city of New York, upon surrender of any outstanding certificate of interest by the registered owner thereof or his assignee, the Trustee shall deliver to him stock certificates for the number of shares of the defendant Southern Pacific Company (of the par value of \$100 each) represented by the surrendered certificate of interest, which stock certificates shall be issued by the said Southern Pacific Company and registered on its books in the name of the new holder, upon condition, however, that the applicant for such conversion or exchange shall file with the Trustee a duly executed affidavit in one of the forms hereto annexed.

The affidavit in the case of an individual applying for such conversion or exchange in his own right shall be substantially in the form annexed hereto marked "Form O".

If the applicant is a corporation or joint-stock company, the affidavit shall be executed by its president, vice president, controller, secretary, or treasurer, or, in the case of a corporation of a foreign country, by one of its managing officers, and shall be substantially in the form annexed hereto marked "Form D".

If the applicant is a partnership, the affidavit shall be executed by one of the partners and shall be substantially in the form annexed hereto marked "Form E".

If the applicant is an executor, administrator, guardian, or testamentary or other trustee of an express trust, the affidavit shall be made by such executor, administrator, guardian, or trustee, as the case may be, or by one of such if the application is made on behalf of joint representatives, or, if such representative is a corporation or joint-stock company, by its president, vice president, controller, secretary, or treasurer, or, in the case of a corporation of a foreign country, by one of its managing officers, and shall be substantially in the form annexed hereto marked "Form F".

Provided, however, that whenever the number of shares of capital stock of the defendant Southern Pacific Company held by the Trustee hereunder shall be reduced by the conversion of certificates of interest as provided in this section to 500 shares, it shall be the duty of the Trustee thereupon to distribute such remaining shares pro rata amongst the registered owners of the then outstanding certificates of interest, or their assignees, upon the surrender of such certificates of interest, without requiring the affidavits hereinabove provided for.

All certificates of interest surrendered pursuant to conversions or exchanges effected under this section shall forthwith be canceled by the Trustee and shall not be reissued.

Within thirty (30) days after the conversion of certificates of interest as herein provided shall have commenced, and at monthly

intervals thereafter, the Trustee shall file with the clerk of the court a report showing the aggregate amount of certificates of interest converted since the last previous report of the Trustee and the names of all persons, firms, or corporations to whom shares of stock of the Southern Pacific Company shall have been issued pursuant to every such conversion involving more than one hundred (100) shares; and from time to time, upon the request of the Attorney General of the United States, the Trustee shall furnish him with any information which he may require relating to the carrying out of this decree.

SECTION 12. The Trustee shall keep at an office maintained by it in the city of New York books for the registration and transfer 1260 of the certificates of interest and subscription receipts issued hereunder. Provision may be made by the Trustee for the registration and transfer of subscription receipts and certificates of interest in London, England. Upon the surrender of any such certificate of interest or subscription receipt duly assigned for transfer and the payment of any stamp tax required by law the Trustee shall issue to the transferee one or more new certificates of interest or subscription receipts for a like number of shares and shall cancel the surrendered certificate of interest or subscription receipt.

The Trustee may treat the person in whose name shall be registered any certificate of interest or subscription receipt, as hereinbefore provided, as the absolute owner thereof, and shall not be affected by any notice to the contrary; and also, in order to enable it to effectuate the true intent of this decree, the Trustee (so far as consistent with the provisions hereof) may decide all matters of detail in respect of the form of subscription receipts or certificates of interest and the arrangements necessary for their issue and transfer.

The Trustee shall be accountable for its action hereunder 1261 only in proceedings in this cause, and any order of the court entered upon notice to it and to the defendants, Union Pacific Railroad Company and Oregon Short Line Railroad Company, shall be full protection to the Trustee for any action which it may take pursuant thereto, and any action so taken by the Trustee shall be binding upon all holders of subscription receipts and certificates of interest. The Trustee shall not be liable to anyone for deferring to take any action until instructed by the court.

In case any certificate of interest or subscription receipt issued hereunder shall become mutilated or be destroyed, the Trustee, in its discretion, may issue a new certificate of interest or subscription receipt of the same denomination in exchange and substitution for and upon cancellation of such mutilated certificate of interest or subscription receipt, or in lieu of and substitution for the same if

destroyed. In case of destruction the applicant for a substituted certificate of interest or subscription receipt shall furnish to the Trustee evidence of such destruction to the satisfaction of the Trustee, in its discretion, and such reasonable indemnity as the Trustee shall require.

SECTION 13. From time to time the Trustee shall pay over to 1262 the defendant Oregon Short Line Railroad Company, or to its order, upon demand, when and as received by it, the moneys received by it in payment of, or on account of, subscriptions or purchases as hereinbefore provided, and it shall not be liable for any loss of such moneys unless incurred through its gross negligence or willful misconduct.

SECTION 14. The Trustee shall be entitled to reasonable compensation, the amount thereof to be approved by the court, for all services rendered by it hereunder, which compensation, together with counsel fees and other expenses incurred hereunder and approved by the court, and all stamp and other taxes imposed by law upon the transfer of the shares of the Southern Pacific Company from the Trustee to the holders of certificates of interest, shall be paid by the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company.

SECTION 15. The defendant Southern Pacific Company is hereby authorized and directed from time to time to make any transfers upon its stock books of the aforesaid shares of its capital stock held by the defendant Oregon Short Line Railroad Company, or its nominees, and to make all payments of dividends contemplated by the provisions of this decree or necessary or appropriate in the performance thereof.

SECTION 16. Nothing in this decree nor in that entered 1263 February 12, 1913, shall be construed as prohibiting the defendant Union Pacific Railroad Company from acquiring at any time the capital stock or the railroads and other property of the defendant Central Pacific Railway Company.

SECTION 17. If at any time after January 1, 1916, any of such certificates of interest shall remain outstanding, the court in its discretion, after a hearing upon such notice to holders of certificates of interest as it may direct, may order the shares of the Southern Pacific Company represented by said certificates to be sold and the proceeds distributed to the registered owner or owners of such certificate or certificates.

SECTION 18. The Trustee is hereby authorized to treat all funds on deposit hereunder as general deposits and to allow interest thereon.

Louis C. Krauthoff, Esquire, of New York City, is appointed commissioner for the court to see to it that the letter and spirit of this



plan of dissolution is carried out and is directed to report to the court from time to time.

SECTION 19. The Trustee shall be subject to removal by the court in its discretion, and, in the event of such removal, the court shall appoint another Trustee.

1264 SECTION 20. Any party to this cause may make application to the court at any time for such further orders and directions as may be necessary or proper in relation to the carrying out of the provisions of this decree, or in relation to the disposition of the unlawfully held shares of the defendant Southern Pacific Company; and jurisdiction thereof is retained for the purpose of giving full effect to this decree and the decree herein entered on February 12, 1913, and for the purpose of making such other and further orders and decrees or taking such other action, if any, as may become necessary or appropriate to carry out and enforce said decrees and the directions of the Supreme Court.

WALTER H. SANBORN,

WILLIAM C. HOOK,

WALTER I. SMITH,

*United States Circuit Judges.*

JUNE 30, 1913.

1265

Form A.

No. ———.

——— shares.

Certificate of interets in Southern Pacific Company stock.

This is to certify that the undersigned (hereinafter designated as the "Trustee") has received and now holds for ——— or assigns certificates representing ——— shares of the capital stock of the Southern Pacific Company, a corporation of the State of Kentucky, of the par value of \$100 each, subject to the terms of a decree entered the ——— day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America against Union Pacific Railroad Company and others, to which decree reference is hereby made for a statement of the terms and conditions upon which this certificate is issued and of the rights of the holder hereof, and to which decree the holder of this certificate assents by acceptance hereof.

This certificate is one of a series of certificates issued by the undersigned in accordance with the terms of the said decree, representing in the aggregate not exceeding ——— shares of the capital stock of said Southern Pacific Company.

1266

The registered owner hereof, or his assigns, is entitled, upon the surrender of this certificate and upon filing with the Trustee an affidavit in the form required by section 11 of said decree (to the effect, in substance, that the applicant does not own any shares of the capital stock of the Union Pacific Railroad Company and is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in his own behalf in good faith), to receive a stock certificate for the number of shares of the capital stock of said Southern Pacific Company represented by this certificate and to receive the amount of all dividends (but without interest thereon) appertaining to the number of shares represented by this certificate declared and payable by the Southern Pacific Company after the 2d day of January, 1913, and collected and received by the Trustee prior to such conversion, and also to receive a dividend order or assignment executed by the Trustee for any declared but unmatured dividend appertaining to said shares which shall be vested at the time of such conversion in the Trustee as the registered holder of said shares. All subscription or other rights offered by the Southern Pacific Company appertaining to the shares represented by this certificate will be assigned to the registered owner hereof, as provided in said decree.

This certificate is transferable by the registered owner hereof, in person or by his duly authorized attorney, at the office of the Trustee in the city of New York, upon surrender and cancellation hereof; and thereupon one or more new certificates for a like number of shares will be issued to the transferee in exchange therefor.

This certificate is not valid until countersigned by the registrar.

In witness whereof, \_\_\_\_\_, as Trustee, has caused this certificate to be executed by one of its vice presidents and its corporate seal to be hereunto affixed and to be attested by one of its assistant secretaries this \_\_\_\_\_ day of \_\_\_\_\_, 191 \_\_\_\_\_.

\_\_\_\_\_  
Trustee.

1268

By \_\_\_\_\_,  
Vice President.

Attest:

\_\_\_\_\_  
Assistant Secretary.

Countersigned:

By \_\_\_\_\_

## Form of assignment.

For value received the undersigned hereby sells, assigns, and transfers unto \_\_\_\_\_ the interest in Southern Pacific Company shares and dividends thereon represented by the within certificate and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer the same on the books of the Trustee, with full power of substitution in the premises.

Dated. \_\_\_\_\_

In the presence of—  
 \_\_\_\_\_  
 \_\_\_\_\_

1269

Form B.

No. \_\_\_\_\_

\_\_\_\_\_ shares.

Subscription receipt for certificate of interest in Southern Pacific Company stock.

This is to certify that the undersigned (hereinafter designated as the "Trustee" has received payment of the first installment of twenty-five dollars (\$25) per share of the subscription price (\$\_\_\_\_\_ per share) of certificates of interest in \_\_\_\_\_ shares of the capital stock of the Southern Pacific Company, of the par value of \$100 per share, and that \_\_\_\_\_, or assigns, will be entitled to receive a fully paid certificate of interest for said shares, at the office of the undersigned in the city of New York, upon the surrender of this receipt and the payment of the balance of said subscription price, on or prior to the \_\_\_\_\_ day of \_\_\_\_\_, 1914, with interest thereon at the rate of 6 per cent per annum to the date of payment.

For failure to pay the said deferred balance of the subscription price, with the interest thereon, on the \_\_\_\_\_ day of \_\_\_\_\_, 1914, will operate as a forfeiture of all rights in respect of the 1270 subscription and the installment previously paid.

The undersigned has received and will hold, until default in the payment of the principal or interest of the deferred balance of the said subscription price, for the above-named subscriber, or assigns, stock certificates representing the number of shares above specified of the capital stock of the Southern Pacific Company, subject to the terms of a decree entered the \_\_\_\_\_ day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America against Union Pacific Railroad Company and others, to which decree reference is hereby made for a statement of the terms and conditions upon which this subscription receipt is issued and of the rights of the holder

hereof, and to which decree the holder hereof assents by acceptance hereof.

All dividends, appertaining to the number of shares above specified, declared and payable by the Southern Pacific Company after the second day of January, 1913, will be collected by the Trustee, and paid over (but without interest thereon) to the holder of a fully paid certificate of interest for said shares, upon the conversion of such certificate of interest into said shares of the capital stock of 1271 the Southern Pacific Company pursuant to the provisions of said decree.

This subscription receipt is transferable by the registered owner hereof, in person or by his duly authorized attorney, at the office of the Trustee in the city of New York or at its office or agency in London, England, upon surrender and cancellation hereof; and thereupon one or more new subscription receipts for a like number of shares will be issued to the transferee in exchange herefor.

The registered owner hereof is entitled, at any time not less than 10 days prior to the annual stockholders' meeting of the Southern Pacific Company held on the Wednesday following the first Monday of April in each year, and not less than 10 days prior to any special stockholders' meeting of said company, to require the Trustee to execute and deliver to such registered owner or his nominee a proxy appointing such attorneys, agents, and proxies as the registered owner hereof shall nominate in writing to appear and vote at such stockholders' meeting upon the number of shares represented by this subscription receipt for the election of directors and upon any other business transacted at such meeting: *Provided, however, That* 1272 such registered owner shall file with the Trustee, at its office in the city of New York, on or before the tenth day preceding such meeting, an affidavit in the form required by sections 9 and 11 of said decree (to the effect, in substance, that the registered owner hereof does not own any shares of the capital stock of the Union Pacific Railroad Company and is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in his own behalf in good faith); and provided, further, that the applicant for such proxy shall at the close of business on the tenth day preceding said meeting be registered on the books of the Trustee as the owner of this subscription receipt.

This subscription receipt shall not be valid for any purpose unless signed on behalf of the Trustee by one of its officers or by its agents in London.

In witness whereof \_\_\_\_\_, as Trustee, has caused this certificate of interest to be executed in its behalf this \_\_\_\_\_ day of \_\_\_\_\_, 1913.

1273

\_\_\_\_\_,  
*Trustee.*

By \_\_\_\_\_.

## Form of assignment.

For value received, the undersigned hereby sells, assigns, and transfers unto \_\_\_\_\_ this subscription receipt and the interest represented thereby in \_\_\_\_\_ shares of the capital stock of Southern Pacific Company, and dividends thereon, and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer the same on the books of the Trustee, with full power of substitution in the premises.

Dated \_\_\_\_\_

In the presence of—  
\_\_\_\_\_  
\_\_\_\_\_

1274

## Form C.

State of \_\_\_\_\_, County of \_\_\_\_\_:

\_\_\_\_\_, being duly sworn, deposes and says:

That deponent is the bona fide owner in his own proper right of a certificate or certificates of interest, numbered \_\_\_\_\_, for \_\_\_\_\_ shares, registered in the name of \_\_\_\_\_, issued by the Central Trust Company of New York, as Trustee, under a decree entered on the \_\_\_\_\_ day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America against Union Pacific Railroad Company and others, and makes this affidavit for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee in exchange for said certificate (or certificates) of interest. That deponent does not own in his (or her) own right any shares of the capital stock of the Union Pacific Railroad Company, a corporation of the State of Utah, whether registered in his (or her) own name on the books of said Union Pacific Railroad Company or registered in the names of others for deponent's use and benefit. That deponent, in making this application, is not acting for or on behalf of any stockholder of the Union  
1275 Pacific Railroad Company or in concert, agreement, or understanding with any other person, firm, or corporation for the

control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in his own behalf in good faith.

Sworn to before me this                      day of                      , 191 .

### Form D.

State of -----, County of -----, ss:

, being duly sworn, deposes and says:

That he is                      of the                      , a corporation (or a joint stock company), hereinafter called the "Applicant." That said applicant is the bona fide owner in its own proper right of a certificate or certificates of interest, numbered                      , for                      shares, registered in the name of                      , issued by the Central Trust Company of New York, as Trustee, under a decree entered on the                      day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the                      United States of America against Union Pacific Railroad Company and others, and that deponent makes this affidavit for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee in exchange for said certificate (or certificates) of interest. That said applicant does not own in its own right any shares of the capital stock of the Union Pacific Railroad Company, a corporation of the State of Utah, whether registered in its own name on the books of said Union Pacific Railroad Company or registered in the names of others for said applicant's use and benefit. That said applicant in making this application is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in its own behalf in good faith.

Sworn to before me this                      day of                      , 191 .

1277

### Form E.

State of -----, County of -----, ss:

, being duly sworn, deposes and says:

That he is a member of the partnership of                      , hereinafter called the "Applicants"; that said applicants are the bona fide owners in their own proper right of a certificate or certificates of interest numbered                      for                      shares, registered in the name of                      , issued by the Central Trust Company of New York, as Trustee, under a decree entered on the                      day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America

against Union Pacific Railroad Company and others, and deponent makes this affidavit for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee in exchange for said certificate (or certificates) of interest. That said applicants do not own in their own right any shares of the capital stock of the Union Pacific Railroad Company, a corporation of the State of Utah, whether registered in the applicants' own name on the books of said Union Pacific Railroad Company or registered in the names of others for their use and benefit. That said applicants, in making this application, are not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in their own behalf in good faith.

Sworn to before me this                      day of                      , 191 .

### Form F.

State of-----, County of-----, ss:

, being duly sworn, deposes and says:

That he is                      of                      . That the trust estate represented by deponent is the bona fide owner in its own proper right of a certificate or certificates of interest numbered                      for                      shares, registered in the name of                      , issued by the Central Trust Company of New York, as Trustee, under a decree entered on the                      day of June, 1913, by the District Court of the United States for the district of Utah, in the 1279 suit of the United States against Union Pacific Railroad Company and others. That deponent makes this affidavit for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee, in exchange for said certificate (or certificates) of interest. That said trust estate does not own any shares of the capital stock of the Union Pacific Railroad Company, a corporation of the State of Utah, whether registered in the name of said trust estate on the books of said Union Pacific Railroad Company or registered in the names of others for the use and benefit of said trust estate. That said trust estate, in making this application, is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in its own behalf in good faith.

Sworn to before me this                      day of                      , 191 .

1280 DEFENDANTS' EXHIBIT No. 50 (PART G), APRIL 16, 1915.

Appellant's brief of facts and appellant's brief of the law filed in the United States Supreme Court on behalf of the United States of America by George W. Wickersham, Attorney General, Frank B. Kellogg and C. A. Severance, special assistants to the Attorney General in "The United States of America vs. The Union Pacific Railroad Company et al."

Pursuant to stipulation at page 1929 of the testimony the briefs offered in evidence need not be copied among the exhibits in this case.

1281 DEFENDANTS' EXHIBIT (NEILL) No. 51, APRIL 16, 1915.

PACIFIC MAIL STEAMSHIP COMPANY,  
*Board of Directors, May 7, 1914.*

The chairman submitted draft of letter over his signature as president, dated New York, May 7, 1914, and addressed to the stockholders of this company, explanatory of the steps proposed to be taken in connection with handling the company's business after July 1, 1914, as outlined in the foregoing resolution; and he stated he proposed, with the approval of this board, to forward a copy of this letter to each stockholder of the company;

Whereupon, on motion duly seconded, it was

*Resolved*, That the proposed action of the chairman to forward a copy of such letter to each stockholder of the company, and the form of such letter submitted as above are hereby approved.

I, Hugh Neill, secretary of the Pacific Mail Steamship Company, do hereby certify that the above and foregoing is a true copy  
1282 of a preamble and resolution duly adopted by the board of directors of the Pacific Mail Steamship Company at a special meeting of said board held at the principal office of the company in the city and State of New York on the 7th day of May, 1914, at which a quorum was present; and that the said preamble and resolution are now in full force and effect. And I do further certify that annexed hereto, marked "Exhibit A", is a true copy of that certain letter, dated New York, N. Y., May 7, 1914, signed J. Kruttschnitt, president, and addressed to the stockholders of this company, in the foregoing resolution referred to; that annexed hereto, marked "Exhibit B", is a true copy of the notice of annual meeting of stockholders of Pacific Mail Steamship Company held May 27, 1914; that annexed hereto, marked "Exhibit C", is a true copy of the printed form of proxy used at the annual meeting of stockholders of this company held May 27, 1914; and that I caused a copy of each of the above-described documents, hereinabove referred to as "Exhibits A.



B, and C", respectively, to be mailed in a sealed wrapper, by United States mail, postage prepaid, addressed to each stockholder of record of this company, at his address as the same appeared on the books of the corporation.

In witness whereof I have hereunto subscribed by name  
1283 and affixed the seal of said company this 5th day of April,  
1915.

[SEAL.]

HUGH NEILL,  
*Secretary.*

"EXHIBIT A."

PACIFIC MAIL STEAMSHIP COMPANY,  
EXECUTIVE OFFICES, 165 BROADWAY,  
*New York, N. Y., May 7, 1914.*

*To the stockholders of the Pacific Mail Steamship Company:*

The opening of the Panama Canal in the near future will practically put an end to that part of the business in which this company is now engaged, which consists of through traffic between San Francisco and Atlantic coast and Gulf ports of the United States and European ports, which traffic is now carried by the company's steamers between San Francisco and Balboa in connection with the Panama Railroad between Balboa and Colon and Atlantic Ocean steamship lines. Upon the opening of the canal such traffic will move in one bottom and without transshipment from port of origin to port of destination. By reason of the expense of transshipment, as  
1284 well as the breakage of cargo through rehandling and the incidental loss, it will be impossible for this company to retain any of such competitive business.

Entirely apart from the prohibitions of the act of Congress, known as the Panama Canal act, it would be impracticable and unprofitable for this company to try to compete for this business by sending through the canal the small combination freight and passenger steamers it now operates in the Panama service, since they would be in competition with the high-capacity vessels of the American-Hawaiian Steamship Company, of the Grace Line, and of the Luckenbach Line, all of the most modern design, with efficient cargo handling facilities, and all operated with small and economical crews, possible where freight alone is carried and passengers are excluded. Moreover, the company possesses the requisite number only of steamers with limited capacity to accommodate the coastwise business between San Francisco and west coast ports. It has not a sufficient number of these small steamers to maintain service between Balboa and Atlantic coast ports, and possible relief by transfer of its large modern ships is out of the question because it owns a number barely sufficient to equip its trans-Pacific lines.

1285 Mr. Schwerin, the general manager of this company, in reporting the above facts, has recommended that the company cease engaging in the business between the San Francisco and Atlantic ports via the Isthmus of Panama, above referred to, and confine the operation of its steamships (heretofore in Panama service) to handling freight and passenger traffic between San Francisco and ports in Mexico and Central America, and, by transshipment at Balboa, to South American ports, and *vice versa*; between said Mexican and Central American ports and Europe and Atlantic coast and Gulf ports said traffic with Europe and Atlantic and Gulf ports to be handled to or from Balboa and transhipped to vessels operating through the canal; and from San Francisco, Mexican, and Central American ports to ports of the West Indies and the north-east coast of South America, and *vice versa*.

The directors approve of these recommendations, but desire that the matter be passed upon by the stockholders at their approaching annual meeting. Accordingly, the board, at its meeting to-day, May 7, 1914, passed resolutions submitting the question to the stockholders. A copy of these resolutions is attached.

1286 It is believed that the foregoing statement, in connection with the recitals of the resolutions, will fully explain the situation.

Yours, truly,

J. KRUTTSCHNITT, *President*.

"EXHIBIT B."

Pacific Mail Steamship Company. Notice of meeting.

165 BROADWAY, *New York, N. Y.*

The annual meeting of stockholders of the Pacific Mail Steamship Company will be held at the office of the company at No. 165 Broadway, New York, N. Y., on Wednesday, the 27th day of May, 1914, at 11.45 o'clock a. m., for the election of directors and the transaction of such other business as may legally come before the meeting.

The books for the transfer of stock will be closed at 12 o'clock m., Saturday, May 23, 1914, and will be reopened at 10 o'clock a. m., Thursday, May 28, 1914.

HUGH NEILL, *Secretary*.

Dated May 7, 1914.

1287 N. B. If you do not expect to be present at the meeting, please execute the enclosed proxy and promptly return it in the accompanying envelope.

HUGH NEILL, *Secretary*.

## "EXHIBIT C."

Proxy—Pacific Mail Steamship Company. Annual meeting May 27, 1914.

Shares -----

*Know all men by these presents:*

That -----, the undersigned, hereby constitute and appoint J. Kruttschnitt, G. M. Buck, and R. P. Schwerin, or any of them, or such person or persons as they or a majority of them may substitute and appoint, attorneys and proxies for and in the name, place, and stead of the undersigned, to vote upon all stock of the Pacific Mail Steamship Company held or owned by the undersigned, according to the number of votes that the undersigned would be entitled to vote if then personally present at the annual meeting of the stockholders of the Pacific Mail Steamship Company, to be held at the office of said company, No. 165 Broadway, New York, N. Y., on Wednesday, the 27th day of May, 1914, at 11.45 o'clock a. m., and at all adjournments thereof, for the election of directors and the transaction of all such other business as may legally come before the meeting, including the approval and ratification of all action of the board of directors and of the executive committee since the last annual meeting of the stockholders of the company, hereby ratifying and confirming all that any of the said attorneys or their substitutes may lawfully do at said meeting in the name, place, and stead of the undersigned.

Authority is hereby given to any of said attorneys and proxies, or their substitutes, to act in the absence of the others, with all the powers which the undersigned would possess if personally present at such meeting. All proxies heretofore made or given by the undersigned are hereby revoked.

In witness whereof the undersigned has hereunto set \_\_\_\_ hand-- and seal-- this ----- day of May, 1914.

Signed, sealed, and delivered in the presence of—

-----

----- [L. S.]

1289 Please date and sign this proxy in the presence of a witness, and return it promptly in the enclosed envelope to Hugh Neill, secretary, 165 Broadway, New York City.

Pacific Mail Steamship Company stockholders' meeting.

NEW YORK, May 27, 1914.

The sixty-seventh annual meeting of stockholders of the Pacific Mail Steamship Company was held at the office of the company, 165

Broadway, New York City, on Wednesday, May 27, 1914, at 11.45 o'clock a. m., pursuant to notice made and given in conformity with law and the by-laws of the company.

On motion duly made and seconded, Mr. Gordon M. Buck was nominated as chairman of the meeting and, having received a unanimous vote, was declared duly elected, and thereupon took the chair.

On motion duly seconded Mr. Hugh Neill was appointed secretary of the meeting.

The secretary submitted proofs of publication of the notice of the annual meeting, showing that the said notice had been published for the time and in the manner prescribed by the by-laws of the company.

1290 Oath of inspectors.—The oath of office of the inspectors of the meeting was then read by the secretary and ordered on file.

List of stockholders.—The secretary also submitted a certified alphabetical list of stockholders of the company registered as such at the close of business on May 23, 1914, and, upon call of said list, it was found that there were present at the meeting, in person or by proxy, stockholders owning shares as follows:

1. By proxies in favor of J. Kruttschnitt, G. M. Buck, and R. P. Schwerin, represented by G. M. Buck.....	135,235 shares.
2. By proxy in favor of Claude A. Simpler.....	1,100 shares.
3. Owen F. Roberts, in person.....	5,200 shares.
4. Martin A. Springsteed, in person.....	40 shares.
Total.....	141,575 shares.

Of the aggregate par value of \$14,157,500 and more than one-half of the capital stock of the company.

Approval of minutes of board of directors.—The minutes of all the meetings of the board of directors since May 28, 1913, were  
1291 read, and, on motion, duly seconded, it was, by a majority vote,

*Resolved*, That all action of the board of directors and officers of the company since the 28th day of May, 1913, as set forth or mentioned in the record of the minutes of meetings of the board of directors of the company, is hereby ratified, approved, and confirmed.

Mr. Simpler, representing 1,100 shares, and Mr. Springsteed, owning 40 shares of stock, desired to be recorded as voting against approval of the resolution adopted by the board of directors at its meeting held May 7, 1914, relating to change in the conduct of the company's business proposed to be made July 1, 1914.

Approval of minutes of executive committee.—The minutes of the meetings of the executive committee, held since May 28, 1913, were submitted, and, on motion, duly seconded, it was unanimously

*Resolved*, That all action of the executive committee and officers of the company since the 28th day of May, 1913, as set forth or men-

tioned in the record of the minutes of the executive committee of this company, is hereby ratified, approved, and confirmed.

1292 Opening of the polls.—At 12 o'clock, noon, the chairman declared the polls open for the purpose of receiving the votes of the stockholders for the election of directors for the ensuing year.

At this point Mrs. Lizzie L. Poirier, a holder of 15 shares of stock, and Mr. George Reuter, a holder of 150 shares of stock came into the meeting.

The following resolution was offered by Mr. Owen F. Roberts:

Resolved, That the by-laws be amended so as to postpone the date fixed for the annual meeting of the stockholders, in order that in the future the annual report of the company may be prepared in time for the annual meeting of stockholders and be submitted at such annual meeting; and that the general manager of the company be present at the annual meeting.

Having failed to receive a second, this motion was not put to a vote.

The preambles and resolutions adopted at a special meeting of the board of directors of this company, held at its office, 165 Broadway, New York, on May 7th, 1914, were submitted to the meeting and read aloud by the secretary.

On motion, duly made and seconded, the following preambles and resolution were by majority vote adopted:

Whereas, the Pacific Mail Steamship Company is now operating steamers which are engaged in freight and passenger traffic as follows:

(1) Between San Francisco and Hawaiian Islands, Philippine Islands, China, and Japan.

(2) Between San Francisco and ports on the west coast of Mexico and Central America, and also west coast of South America by interchange with other vessels at Balboa.

(3) Between west coast ports of Mexico and Central America and New York, New Orleans, and European ports, by through route consisting of its own steamers between San Francisco and Balboa, the Panama Railroad and Atlantic Ocean steamship service.

(4) Between San Francisco, west coast ports of Mexico and Central America and ports of the West India Islands and the northeast coast of South America, by a through route consisting of its own steamers on the Pacific Coast, the Panama Railroad and Atlantic Ocean steamship service.

(5) Between San Francisco and New York, New Orleans, and European ports by through route consisting of its own steamers between San Francisco and Balboa, the Panama Railroad and

1294 Atlantic Ocean steamship service.

Whereas Mr. R. P. Schwerin, the vice president and general manager of this company, has reported to the board of directors that irrespective of the prohibitions of the Panama Canal act it will not be practicable or feasible for this company, after the opening of the Panama Canal, to continue in the class of traffic embraced in section (5) above, because with a transshipment at Balboa it can not secure such traffic in competition with ships operating through the Panama Canal between San Francisco and Atlantic and European ports, and because the ships of this company now employed in such trade are unsuitable and inadequate for service through the canal; and has recommended that the company continue to engage in all of the traffic above specified except that embraced in section (5).

Whereas the board of directors by preambles and resolution, adopted at a special meeting held May the 7th, 1914, and submitted at this meeting, has referred to the stockholders the aforesaid recommendations of Mr. Schwerin;

*Resolved*, That the above referred to recommendations of Mr. Schwerin be approved, and the board of directors be and they  
1295 are hereby authorized to withdraw from the traffic described in clause (5) of the above preambles and to continue in the traffic embraced in sections (1), (2), (3), and (4), or so much thereof in which in the judgment of the board this company should continue to engage, such change to be made on or before July the 1st, 1914, or at such other time or times as the board of directors may determine.

Mr. Simpler, representing 1,100 shares, Mr. Springsteed, representing 40 shares, and Mr. Owen F. Roberts, representing 5,200 shares of stock, desired to be recorded as voting against the adoption of the foregoing resolution. Mr. George Reuter desired to be recorded as not voting. All other shares represented at the meeting were voted in favor of the resolution.

Closing of the polls.—At 2 o'clock p. m. the shareholders having had full opportunity to cast their ballots, the chairman declared the polls closed. Mr. George Reuter, representing 150 shares of stock, requested to be recorded as not voting in the election for directors.

Thereupon the inspectors submitted their report as follows:

1296 "Pacific Mail Steamship Company. Certificate of inspectors of election of directors.

We, the undersigned, duly elected inspectors of election to serve at the annual meeting of stockholders of the Pacific Mail Steamship Company, a stock corporation of the State of New York, held on the 27th day of May, 1914, do hereby certify as follows:

That a meeting of the stockholders of said corporation was held at 11.45 o'clock a. m. on the 27th day of May, 1914, at the office of the corporation, at 165 Broadway, New York City, pursuant to due notice.

That before entering upon the discharge of our duties we were severally sworn, and the oath so taken by us is hereto annexed.

That the result of the votes taken at such meeting for the election of directors of said corporation for the ensuing year was as follows:

	Shares.
Henry W. de Forest.....	135, 235
Robert Goelet.....	135, 235
J. Kruttschnitt.....	135, 235
1297 George H. Macy.....	135, 235
Ogden Mills.....	135, 235
El. P. Swenson.....	135, 235
R. P. Schwerin.....	135, 235
L. J. Spence.....	135, 235
W. A. Worthington.....	135, 235
Owen F. Roberts.....	6, 355

That Henry W. de Forest, Robert Goelet, J. Kruttschnitt, George H. Macy, Ogden Mills, E. P. Swenson, R. P. Schwerin, L. J. Spence, and W. A. Worthington, each having received 135,235 of the votes cast at said election, were declared by us duly elected directors of said corporation for the ensuing year.

In witness whereof we have made and signed this certificate this 27th day of May, 1914.

W. F. BULL.  
GEO. M. THORNTON.  
H. B. HENRY.

STATE OF NEW YORK,  
County of New York, ss:

On the 27th day of May, 1914, before me personally came W. F. Bull, Geo. M. Thornton, and H. B. Henry, to me known  
1298 and known to me to be the individuals described in and who executed the foregoing certificates, and severally acknowledged to me that they executed the same.

[SEAL.]

WM. E. LA PLANTE,  
Notary Public, New York County No. 2227,  
New York Register No. 6164.

Term expires March 30, 1916.

STATE OF NEW YORK,  
County of New York, ss:

We, the undersigned, W. F. Bull, Geo. M. Thornton, and H. B. Henry, duly appointed inspectors of election to serve at the annual

meeting of stockholders of the Pacific Mail Steamship Company to be held at the office of said company, at No. 165 Broadway, in the city of New York, N. Y., on this 27th day of May, nineteen hundred and fourteen, being severally duly sworn, do depose and say, and each for himself deposes and says, that he will faithfully execute the duties of inspectors at such meeting with strict impartiality and to the best of his ability.

W. F. BULL.

GEO. M. THORNTON.

H. B. HENRY.

1299 Sworn to and subscribed before me this 27th day of May, 1914.

[SEAL.]

WM. E. LA PLANTE,

*Notary Public, New York County, No. 2227.*

*New York Register No. 6164.*

Term expires March 30, 1916."

On motion, duly seconded, the report of the inspectors of election was accepted and ordered placed on file, and the chairman declared that Messrs. Henry W. de Forest, Robert Goelet, J. Kruttschnitt, George H. Macy, Ogden Mills, E. P. Swenson, R. P. Schwerin, L. J. Spence, and W. A. Worthington, mentioned therein, were duly elected directors of the company for the ensuing year.

On motion, adjourned.

HUGH NEILL, *Secretary.*

1300 I, Hugh Neill, secretary of the Pacific Mail Steamship Company, do hereby certify that the above and foregoing is a true copy of the minutes of the annual meeting of its stockholders held on the 27th day of May, 1914; and that annexed hereto is a copy of that certain resolution adopted at a special meeting of the board of directors of the Pacific Mail Steamship Company held May 7th, 1914, to which reference is made in the preamble and resolution appearing on page 4 of the foregoing minutes of the annual meeting of stockholders above referred to. And I do further certify that at the above-mentioned annual meeting of stockholders, held on the 27th day of May, 1914, the Southern Pacific Company was present by proxy covering 110,755 shares of this company, owned by said Southern Pacific Company, and that such shares were duly voted by proxy and participated in said annual meeting.

In witness whereof I have hereunto subscribed my name and affixed the seal of said company this 5th day of April, 1915.

[SEAL.]

HUGH NEILL, *Secretary.*



1301 Pacific Mail Steamship Company. Resolution adopted by board of directors May 7, 1914.

Whereas the Pacific Mail Steamship Company is now operating steamers which are engaged in freight and passenger traffic as follows:

(1) Between San Francisco and Hawaiian Islands, Philippine Islands, China, and Japan.

(2) Between San Francisco and ports on the west coast of Mexico and Central America, and also west coast of South America by interchange with other vessels at Balboa.

(3) Between west coast ports of Mexico and Central America and New York, New Orleans, and European ports, by through route consisting of its own steamers between San Francisco and Balboa, the Panama Railroad, and Atlantic Ocean steamship service.

(4) Between San Francisco, west coast ports of Mexican and Central America, and ports of the West India Islands and the north-east coast of South America, by a through route consisting of its own steamers on the Pacific coast, the Panama Railroad, and Atlantic Ocean steamship service.

1302 (5) Between San Francisco and New York, New Orleans, and European ports, by through route consisting of its own steamers between San Francisco and Balboa, the Panama Railroad, and Atlantic Ocean steamship service.

Whereas Mr. R. P. Schwerin, the vice president and general manager of the company, has reported to this board that, irrespective of the prohibitions of the Panama Canal act, it will not be practicable or feasible for this company, after the opening of the Panama Canal, to continue in the class of traffic embraced in section (5) above, because with a transshipment at Balboa it can not secure such traffic in competition with ships operating through the Panama Canal between San Francisco and Atlantic and European ports, and because the ships of this company now employed in such trade are unsuitable and inadequate for service through the canal.

Whereas Mr. Schwerin has recommended that the company continue to engage in all of the traffic above specified except that embraced in section (5).

Whereas this board approves Mr. Schwerin's recommendations, but believes that the suggested change in the business of the company should be approved or authorized by the stockholders.

1303 *Resolved*, That this board refer to the stockholders at their next meeting the matter of withdrawing from the traffic described in section (5) above, and continuing in the traffic embraced in sections (1), (2), (3), and (4), or so much thereof in which, in the judgment of the board, it should continue to engage, and that such

change shall be made on or before July 1, 1914, or at such other time as the board of directors may determine.

I hereby certify that the above and foregoing is a true copy of preambles and resolution unanimously adopted at a special meeting of the board of directors of the Pacific Mail Steamship Company, duly convened and held at the office of said Pacific Mail Steamship Company, 165 Broadway, New York, N. Y., on the 7th day of May, 1914, at 11.30 o'clock a. m., eastern time.

In witness whereof I have hereunto signed my name and affixed the seal of said company this 7th day of May, 1914.

[SEAL.]

HUGH NEILL, *Secretary.*

1304 DEFENDANTS' EXHIBIT No. 52, APRIL 16, 1915.

Interstate Commerce Commission, Washington.

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of application of Southern Pacific Company, under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company, filed February 18, 1914, under docket No. 6605, the original of which is now on file and of record in the office of this Commission.

In testimony whereof I have hereunto subscribed by name and affixed the seal of the commission this 5th day of April, 1915.

GEORGE B. MCGINTY,

*Secretary of the Interstate Commerce Commission.*

[Seal, Interstate Commerce Commission, 1887.]

1305 Before the Interstate Commerce Commission.

Application of Southern Pacific Company under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company.

Comes now Southern Pacific Company, hereinafter called the petitioner, and respectfully shows:

1. The petitioner is a corporation duly organized and existing under the laws of the State of Kentucky. The petitioner owns, controls, and operates either directly, as lessee, or through stock owner-

ship, lines of railroad within the States of California, Oregon, Utah, Nevada, Arizona, and New Mexico, extending from Portland in the State of Oregon, to Sacramento, in the State of California, from Ogden, in the State of Utah, through Sacramento to San Francisco, in the State of California, and from San Francisco, in the State of

California, to a point in the State of New Mexico on the Rio Grande River near El Paso, in the State of Texas, with branches thereof reaching numerous points in said States. Said lines of railroad hereinbefore described connect at or near El Paso with the line of railroad of The Galveston, Harrisburg & San Antonio Railway Company, which owns and operates a line of railroad extending from said point to Galveston and Houston, in the State of Texas. At said city of Houston, in the State of Texas, the railroad of The Galveston, Harrisburg & San Antonio Railway Company connects with a line of railroad owned and operated by the Texas & New Orleans Railroad Company, which owns and operates a line of railroad extending from said city of Houston to the Sabine River, at which point said last-named line of railroad connects with a line of railroad owned and operated by the Louisiana Western Railroad Company extending from the Sabine River to Lafayette, in the State of Louisiana, at which point the line of railroad of the last named company connects with a line of railroad owned and operated by the Morgan's Louisiana & Texas Railroad & Steamship Company, extending from Lafayette, in the State of Louisiana, to New Orleans, in the State of Louisiana. Each of said lines of railroad has numerous branches extending to numerous points within the States of Louisiana and Texas.

1307 Substantially all of the capital stock of each of the railroad companies hereinbefore described as owning and operating lines of railroad east of El Paso in the State of Texas is owned by or in the interest of the petitioner. The petitioner is also the owner of substantially all of the capital stock of the Houston East & West Texas Railway Company, the Houston & Shreveport Railroad Company, and the Houston & Texas Central Railroad Company, which through connections with each other or with one or more of the lines of railroad hereinbefore described form continuous lines for the transportation of persons and property to numerous points within the States of Texas and Louisiana. All of the lines of railroad hereinbefore described are engaged in the interstate transportation of persons and property and constitute a single system of railroads commonly known as the Southern Pacific System.

The petitioner is also the owner of all of the outstanding capital stock of the Southern Pacific Railroad Company of Mexico, a corporation organized and existing under the laws of the State of New Jersey, which owns and operates a line of railroad extending from

at or near Nogales, in the State of Arizona, at which point it connects with the railroad of the petitioner to various points in the Republic of Mexico.

1308 2. The petitioner also owns 110,800 shares of the par value of \$11,080,000 out of a total of 200,000 shares of the par value of \$20,000,000 of the capital stock of the Pacific Mail Steamship Company, a corporation organized and existing under the laws of the State of New York, hereinafter called the Steamship Company. The Steamship Company owns and operates steamships plying between San Francisco, in the State of California, Hawaii, and the Orient, and between San Francisco and Balboa on the western coast of the Isthmus of Panama and intermediate ports in the Republic of Mexico and in Central America. The vessels engaged in the latter service are not suitable for transoceanic service.

3. Traffic between Atlantic and Pacific ports of the United States and between Pacific ports of the United States and Europe in which the Steamship Company engages is now handled across the Isthmus of Panama by rail, and thence by water carriers in which neither the petitioner nor the Steamship Company has any direct or indirect interest. Upon the opening of the Panama Canal it will be impracticable and infeasible to continue the present service described in this paragraph 3 of this petition, or to handle traffic between the Pacific ports of the United States and the Atlantic or  
1309 Gulf coast or Europe by shipment to or from Balboa, there to be transhipped to or from other vessels in competition with through service. As a result of the opening of the Canal the Steamship Company will be unable to engage in traffic between said ports.

4. From and after July 1, 1914, the steamship company will engage (in addition to its Hawaiian-Asiatic traffic hereinbefore described) in traffic between San Francisco and the ports of San Blas, Manzanillo, Acapulco, and Salina Cruz, in the Republic of Mexico; Ocos, Champerico, and San Jose de Guatemala, in the Republic of Guatemala; Acajutla, La Libertad, and La Union, in the Republic of Salvador; Amapala, in the Republic of Honduras; Corinto and San Juan del Sur, in the Republic of Nicaragua, and Punta Arenas, in the Republic of Costa Rica, between said ports above named, between said Mexican and Central American ports and Europe, and between said Mexican and Central American ports and Atlantic and Gulf ports of the United States, which said traffic with Europe and with the Atlantic and Gulf ports will be handled by the steamship company to or from Balboa and transhipped in connection with the vessels of other lines in no way connected with the petitioner.

1310 It will also engage in traffic between the port of Mazatlan, Mexico, and other Mexican and Central American ports above

named and between Mazatlan and Atlantic and Gulf ports of the United States.

The location of the ports named herein is shown by the map attached hereto and made a part hereof marked "Exhibit A."

None of the Mexican and Central American ports above named, except Mazatlan, a point on the Southern Pacific Railroad of Mexico, are reached by any railroad company owned, leased, operated, or controlled by the petitioner or in which the petitioner has any interest whatsoever by stock ownership or otherwise, either directly or indirectly, through any holding company or by stockholders or directors in common or in any other manner. The steamship company and the petitioner do not and could not compete in any manner whatsoever for any of the traffic described in this paragraph; and petitioner alleges that its lines of railroad and the water line and service described herein are not competitive within the meaning of section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912; 1311 and that the said water service is being and will be operated in the interest of the public and is and will be of advantage to the convenience and commerce of the people, and that its continuance will neither exclude, prevent, nor reduce competition.

5. From and after July 1, 1914, the steamship company will also engage in traffic between San Francisco and Mazatlan, in the Republic of Mexico. The petitioner alleges that the situation in connection with the handling of said traffic is such as to admit of no possible competition between the rail lines of the petitioner and the steamship company; that the steamship company and the railroad lines of the petitioner do not and may not compete for said traffic within the meaning of said act of Congress of August 24, 1912; and that the said water service between said points is being and will be operated in the interest of the public and is and will be of advantage to the convenience and commerce of the people, and that its continuance will neither exclude, prevent, nor reduce competition.

6. From and after July 1, 1914, the petitioner will also engage in the handling of local traffic between San Francisco and Balboa, but, as alleged in paragraph 3 hereof, will be unable to engage in 1312 traffic between San Francisco and Balboa for transshipment to or from Atlantic or Gulf ports of the United States or to or from Europe. Petitioner states that said local traffic between San Francisco and Balboa is traffic for which the steamship company and the railroad lines of the petitioner do not and may not compete, and that the water service of the steamship company between said points is being and will be operated in the interest of the public and is and will be of advantage to the convenience and commerce of the people,

and that its continuance will neither exclude, prevent, nor reduce competition.

7. The petitioner is advised and believes that the continuance of the existing service hereinbefore set forth as that in which the steamship company will engage from and after July 1, 1914, will not cause the petitioner's ownership of stock in the Pacific Mail Steamship Company to be in violation of said act of Congress of August 24, 1912, but as said act contemplates that application shall be made to this commission not only for permission to continue a service in violation of the statute but likewise for the purpose of determining whether an existing or contemplated situation is or will be in violation thereof, the petitioner in order to avoid any suspicion of  
1313 wrongdoing or violation of the said act files this its application with this honorable commission.

Wherefore petitioner prays that a full hearing may be had as provided by section 11 of the act of Congress of August 24, 1912, and that the commission shall make an order or finding with respect to the meaning or interpretation of said act as applied to the facts hereinbefore set forth and for such relief as it may be entitled to receive.

FRED H. WOOD,  
C. W. DURBROW,  
GEO. D. SQUIRES,  
*Attorneys for Petitioner.*

Of counsel:

J. P. BLAIR,  
W. F. HERRIN.

NEW YORK, *February 17, 1914.*

1314 Interstate Commerce Commission, Washington.

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of amendment filed May 21, 1914, to application of Southern Pacific Company, under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company, docket No. 6605, the original of which is now on file and of record in the office of this commission.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the commission this 5th day of April, 1915.

GEORGE B. MCGINTY,  
*Secretary of the Interstate Commerce Commission.*  
[Seal, Interstate Commerce Commission, 1887.]

1315

Before the Interstate Commerce Commission.

In re application of Southern Pacific Company under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company.

Amendment of application of Southern Pacific Company.

Now comes Southern Pacific Company (hereinafter called the petitioner) and files this amendment to its application heretofore filed herein, and respectfully shows:

As set forth in the original application filed herein, the Pacific Mail Steamship Company (hereinafter called the steamship company) is engaged in the transportation of passengers and property between Atlantic and Pacific ports of the United States and 1316 between Pacific ports of the United States and Europe, which traffic is now handled across the Isthmus of Panama by rail and to or from the Isthmus by water carriers on the Atlantic side thereof, in which neither the petitioner nor the steamship company has any direct or indirect interest; and, as therein set forth, upon the opening of the Panama Canal it will be impracticable and infeasible to continue said service involving transshipment in competition with through service. Petitioner is informed that the said canal will probably not be open for through service until after July 1, 1914, after which date it is stated in the original application herein that the steamship company will be unable to engage in said traffic. It has been represented by the commercial and shipping interests of the Pacific coast that it would be unfortunate from the standpoint of the shipper if the steamship company should discontinue participation in said traffic until the canal is open for through traffic, and that without the steamers of the steamship company there would probably not be sufficient steamers to handle this traffic. In view of said representations the steamship company is willing and proposes to continue in said traffic, both passenger and freight, until there shall be substituted therefor a satisfactory and equivalent 1317 through service.

Petitioner also states that in addition to the traffic set forth in the original application filed herein, the steamship company engages in traffic between San Francisco and Mexican and Central American ports and ports of the West India Islands and the north-

east coast of South America. Petitioner states that the water service herein described is being and will be operated in the interest of the public, and is and will be of advantage to the convenience and commerce of the people, and that its continuance will neither exclude, prevent, nor reduce competition.

Wherefore petitioner prays that a full hearing may be had as provided by section 11 of the act of Congress of August 24, 1912, upon the matters herein set forth, as well as upon those set forth in the original application filed herein; and that the commission shall make an order or finding with respect to the meaning or interpretation of said act as applied to the facts hereinbefore set forth; and if continuance in said traffic or any part thereof shall be found to be in violation of the strict letter of said act, that the commission may make an order granting permission for continuance of the service herein described.

1318

F. H. WOOD,  
C. W. DURBROW,  
*Attorneys for Petitioner.*

Of counsel:

J. P. BLAIR.

WM. F. HERRIN.

NEW YORK, May 20, 1914.

1319

Interstate Commerce Commission, Washington.

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of amendment filed December 7, 1914, to application of Southern Pacific Company, under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company, docket No. 6605, the original of which is now on file and of record in the office of this commission.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the commission this 5th day of April, 1915.

GEORGE B. MCGINTY,

*Secretary of the Interstate Commerce Commission.*

[Seal, Interstate Commerce Commission, 1887.]



1320 Before the Interstate Commerce Commission.

Application of Southern Pacific Company to amend its application under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "an act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company.

Now comes Southern Pacific Company and states that at the time of the filing of its application herein it was advised that transshipment of traffic between Mexican and Central American ports and Europe and between Mexican and Central American ports and Atlantic and Gulf ports of the United States, as described in paragraph 4 thereof, could be effected by transfer by railroad across the Isthmus of Panama from Balboa to Colon; that it has since been advised that the Panama Railroad will not handle commercial shipments and that transfer must be made directly from vessel to vessel at one end of the canal; and that it is also advised that such transshipment from vessel to vessel cannot be made in all instances at

1321 Balboa at the western end of the canal, and that it therefore may be necessary at times to make transfer of such traffic between Mexican and Central American ports and Europe or Atlantic and Gulf ports of the United States at Colon as well as at Balboa.

In order, therefore, that said petition may conform to the change in conditions, petitioner prays leave to amend the same by inserting after the word "Balboa" in the sixteenth line of the fourth paragraph thereof the words "or Colon."

H. C. BOOTH,  
FRED H. WOOD,  
*Attorneys for Petitioner.*

J. P. BLAIR,  
W. F. HERRIN,  
*Of Counsel.*  
NEW YORK, *December 3, 1914.*

1322 Interstate Commerce Commission, Washington.

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of amendment filed April 2, 1915, to amended application of Southern Pacific Company, under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the

opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company, docket No. 6605, the original of which is now on file and of record in the office of this commission.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the commission this 9th day of April, 1915.

GEORGE B. MCGINTY,

*Secretary of the Interstate Commerce Commission.*

[Seal, Interstate Commerce Commission, 1887.]

1323           Before the Interstate Commerce Commission.

In re Application of Southern Pacific Company to amend its application under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company.

Amendment to amended application.

Now comes Southern Pacific Company and amends its amended application herein by striking out, after the word "Balboa," in the 16th line of the fourth paragraph thereof, the words "or Colon," which said words, "or Colon," were inserted by an amendment to the original application herein, dated New York, December 3, 1914, and transmitted to this honorable commission on December 5, 1914, so that the fourth paragraph of the application herein, as now amended, will be restored to its original condition, and will read as follows:

1324       "4. From and after July 1, 1914, the steamship company will engage (in addition to its Hawaiian-Asiatic traffic hereinbefore described) in traffic between San Francisco and the ports of San Blas, Mazanillo, Acapulco, and Salina Cruz, in the Republic of Mexico; Ocos, Champerico, and San Jose de Guatemala, in the Republic of Guatemala; Acajutla, La Libertad, and La Union, in the Republic of Salvador; Amapala, in the Republic of Honduras; Corinto and San Juan del Sur, in the Republic of Nicaragua; and Punta Arenas, in the Republic of Costa Rica, between said ports above named, between said Mexican and Central American ports and Europe, and between said Mexican and Central American ports and Atlantic and Gulf ports of the United States, which said traffic with

Europe and with the Atlantic and Gulf ports will be handled by the steamship company to or from Balboa and transhipped in connection with the vessels of other lines in no way connected with the petitioner. It will also engage in traffic between the port of Mazatlan, Mexico, and other Mexican and Central American ports above named and between Mazatlan and Atlantic and Gulf ports of the United States.

"The location of the ports named herein is shown by the map attached hereto and made a part hereof, marked 'Exhibit A.'

1325 "None of the Mexican and Central American ports above named, except Mazatlan, a point on the Southern Pacific Railroad of Mexico, are reached by any railroad company owned, leased, operated, or controlled by the petitioner or in which the petitioner has any interest whatsoever by stock ownership or otherwise, either directly or indirectly, through any holding company or by stockholders or directors in common or in any other manner. The steamship company and the petitioner do not and could not compete in any manner whatsoever for any of the traffic described in this paragraph; and petitioner alleges that its lines of railroad and the water line and service described herein are not competitive within the meaning of section 11 of 'An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone,' approved August 24, 1912; and that the said water service is being and will be operated in the interest of the public and is and will be of advantage to the convenience and commerce of the people, and that its continuance will neither exclude, prevent, nor reduce competition."

1326

FRED H. WOOD,

H. C. BOOTH,

*Attorneys for Petitioner.*

J. P. BLAIR,

W. F. HERRIN,

*Of Counsel.*

Dated, New York, March , 1915.

(Pursuant to stipulation at page 1937 of the testimony, the remainder of Defendants' Exhibit No. 52, being the report of the Interstate Commerce Commission upon the foregoing application, may be referred to in the officially printed and bound volumes of reports of the Interstate Commerce Commission, with the same effect as if incorporated in the record.)

1327 DEFENDANTS' EXHIBIT (GRIGGS) No. 53, APRIL 20, 1915.

Report of the Attorney General.

DEPARTMENT OF JUSTICE,  
*Washington, D. C., November 30, 1899.*

*To the Senate and House of Representatives of the United States of America in Congress assembled:*

\* \* \* \* \*

Pacific Railroad matters.—The deficiency appropriation act of July 7, 1898 appointed the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General a commission, with full power to settle the indebtedness to the Government growing out of the issue of bonds to aid in the construction of the Central Pacific and Western Pacific bond-aided railroads, upon such terms and in such manner as might be agreed upon by them, or by a majority of them, and the owners of said railroads, subject to the approval of the President.

1328 An agreement for the settlement of this indebtedness was entered into between the said commissioners with the railroad companies on February 1, 1899. At that date the amount due the United States for principal and interest upon its subsidy liens upon the Central Pacific and Western Pacific Railroads was \$58,812,715.48, more than one-half of which was accrued interest upon the principal debt. The agreement of settlement provided for the funding of this amount into 20 promissory notes bearing date February 1, 1899, payable, respectively, on or before the expiration of each successive six months for ten years, each note being for the sum of \$2,940,635.78, or one-twentieth of the total amount due. The notes bear interest at the rate of 3 per cent per annum, payable semiannually, and have a condition attached to the effect that if default be made, either in the payment of principal or interest of either of said notes or in any part thereof, then all of the said notes outstanding, principal and interest, shall immediately become due and payable notwithstanding any other stipulation of the agreement of settlement.

It was further agreed that the payment of the principal and  
1329 interest of the notes shall be secured by the deposit with the United States Treasury of \$58,820,000 of face value of first refunding mortgage 4 per cent gold bonds, to be thereafter issued by the Central Pacific or its successor having charge of the railroads then owned by said company, such bonds to be part of an issue of not exceeding \$100,000,000 in all, and to be secured by mortgage

upon all railroads, equipments, and terminals owned by said Central Pacific Railroad Company, such mortgage to be a first lien upon such property or to be secured by the deposit as collateral of certain percentages of the outstanding bonds upon such property or on the different divisional parts thereof.

The notes provided for by this agreement were duly executed and delivered to the Treasurer of the United States in conformity with the terms of the agreement. In pursuance of another provision of the agreement the four earliest maturing notes were purchased by Speyer & Co. March 10, 1899, and the proceeds, amounting to \$11,762,543.12 and accrued interest to the date of payment \$35,771.02, in all \$11,798,314.14, were received and covered into the Treasury March 27, 1899, as part payment of the indebtedness of the Central Pacific and Western Pacific Railroad Companies. The properties of the various companies comprising the Central Pacific system were subsequently conveyed to a new corporation called the Central Pacific Railway Company, which latter company executed the mortgage and bonds provided for by the agreement of settlement. On October 7, 1899, bonds were delivered to the Treasury Department by the Pacific Railway Company to secure the outstanding notes held by the Treasury in conformity to the terms of the agreement of settlement. The United States therefore holds the notes of the Central Pacific Railroad Company guaranteed by the Southern Pacific Railroad Company to the amount of \$47,050,172.36, bearing interest payable semiannually at the rate of 3 per cent per annum and secured by the deposit of an equal amount of first-mortgage bonds of the Pacific Railway Company, thus providing beyond doubt or peradventure for the sure and gradual payment of the whole of this subsidy debt, and providing in the meantime for the payment of interest at the rate of 3 per cent upon the unpaid balances.

In my report for the year 1898 I advised the Congress that the whole amount of principal and interest due on the Union Pacific subsidy had been realized and paid into the Federal Treasury, and that of the amount due upon the Kansas Pacific subsidy the whole amount of the principal, namely, \$6,303,000 had been paid in, leaving due to the Government only the accrued interest on the Kansas Pacific, amounting to about \$6,500,000. I further reported that I had caused to be filed a claim on behalf of the United States on account of this deficiency against certain funds remaining in the hands of the receivers of the Union Pacific Railway Company, which claims, along with many others aggregating a large sum, were subject to investigation and subsequent adjudication. This matter has since been brought to a conclusion, with the very satis-

factory result that the United States procured a decree directing the receivers to pay on account of its deficiency debt out of the moneys in their hands as pro rata dividend upon its deficiency claim the sum of \$821,897.70, which sum has recently been paid into the Treasury of the United States and is to be credited against the deficiency above mentioned.

The proceedings referred to in my last report pending against the American Loan and Trust Company of Boston as trustee for the purpose of securing on account of the Government's deficiency claim certain moneys in the hands of such trustee which represent the proceeds of securities mortgaged for the benefit and further security of first-mortgage bonds of the Kansas Pacific Railway, and for the benefit, protection, and further security of the United States in respect to their subsidy bonds and interest thereon, have not yet been brought to a conclusion, but are being pressed with all due diligence, and before long I hope to be able to report the collection of a very substantial sum from this source in further reduction of the deficiency due the Government on this account.

The amounts paid or secured to be paid to the United States on account of Pacific Railroad subsidy claims since November 1, 1897, will appear from the following table:

Union Pacific, cash.....	\$58,448,223.75
Kansas Pacific, cash.....	6,303,000.00
Central and Western Pacific—	
Cash.....	11,798,314.14
Notes.....	47,050,172.36
Kansas Pacific, dividend on deficiency due United States, cash..	821,897.70
Total.....	124,421,607.95

So that it appears that out of an indebtedness of about \$130,-  
 1333 000,000, more than one-half of which consists of accrued interest, the Government has realized in cash or its equivalent the sum of \$124,421,670.95 within a period of less than two years.

Taking into account the enormous material benefits that have accrued to the country from the construction of these transcontinental lines of communication and the advantage which the Government has had by way of reduced rates of transportation and service over them, the participation of the Government in the construction and maintenance of these enterprises has been fully justified and the faith of the original promoters and projectors of these great lines has been proven to have had a substantial basis.

\* \* \* \* \*

## 1334 DEFENDANTS' EXHIBIT (SPENCE) No. 54, APRIL 21, 1915.

(Official map of Rand, McNally & Company showing in different colors, on a scale of thirty-five miles to the inch, all of the lines embraced within the Southern Pacific system.)

## 1335 DEFENDANTS' EXHIBIT (SPENCE) No. 55, APRIL 21, 1915.

(Official map of Rand, McNally & Company showing in different colors, on a scale of 160 miles to the inch, all of the lines embraced within the Southern Pacific system.)

## 1336 DEFENDANTS' EXHIBIT (SPENCE) No. 56, APRIL 21, 1915.

(Map showing, in red, lines embraced within the Southern Pacific system, and, in green, all other lines engaged in transcontinental business December 31, 1900.

## 1337 DEFENDANTS' EXHIBIT (SPENCE) No. 57, APRIL 21, 1915.

(Map showing, in red, lines embraced within the Southern Pacific system, and, in green, all other lines engaged in transcontinental business October 1, 1914.)

## 1338 DEFENDANTS' EXHIBIT (SPENCE) No. 58, APRIL 22, 1915.

Lines maintaining soliciting organizations in California.

Atchison, Topeka & Santa Fe Railway.  
Baltimore & Ohio Railroad.  
Canadian Pacific Railway.  
Chesapeake & Ohio Railway.  
Chicago, Burlington & Quincy Railroad.  
Chicago Great Western Railroad.  
Chicago, Milwaukee & St. Paul Railway.  
Chicago, Rock Island & Pacific Railway.  
Chicago & Alton Railroad.  
Chicago & Eastern Illinois Railroad.  
Chicago & North Western Railway.  
Colorado Midland Railway.  
Colorado & Southern Railway.  
Delaware, Lackawanna & Western Railroad.  
Denver & Rio Grande Railroad.  
El Paso & Southwestern System.  
Empire Fast Freight Line.

- 1339 Erie Railroad.  
Grand Trunk Railway System.  
Great Northern Railway.  
Illinois Central Railroad.  
Kansas City, Mexico & Orient Railway.  
Kansas City Southern Railway.  
Lehigh Valley Railroad.  
Minneapolis, St. Paul & Sault Ste. Marie Railway.  
Minneapolis & St. Louis Railroad.  
Missouri, Kansas & Texas Railway.  
Missouri Pacific Railway.  
New York Central Lines.  
Nickel Plate.  
Northern Pacific Railway.  
Oregon Short Line.  
Oregon-Washington Railroad & Navigation Co.  
Pennsylvania System.  
Pere Marquette Railroad.  
Queen & Crescent Route.  
San Pedro, Los Angeles & Salt Lake Railroad.  
Southern Railway.  
St. Louis, Iron Mountain & Southern Railway.
- 1340 St. Louis Southwestern Railway.  
St. Louis & San Francisco Railroad.  
Texas & Pacific Railway.  
Toledo, St. Louis & Western Railroad.  
Union Pacific Railroad.  
Wabash Railroad.  
Western Pacific Railway.  
Total, 46.

1341 DEFENDANTS' EXHIBIT (SPENCE) No. 59, APRIL 22, 1915.

Lines maintaining soliciting organizations in Atlantic seaboard territory.

Atchison, Topeka & Santa Fe Railway.  
Baltimore & Ohio Railroad.  
Boston & Albany Railroad.  
Boston & Maine Railroad.  
Canadian Pacific Railway.  
Central Railroad of New Jersey.  
Chesapeake & Ohio Railway.  
Chicago & Alton Railroad.  
Chicago & North Western Railway.



- Chicago, Burlington & Quincy Railroad.
- Chicago Great Western Railroad.
- Chicago, Milwaukee & St. Paul Railway.
- Chicago, Rock Island & Pacific Railway.
- Cincinnati, Hamilton & Dayton Railroad.
- Cincinnati, New Orleans & Texas Pacific Ry.
- Cleveland, Cincinnati, Chicago & St. Louis Ry.
- 1342 Colorado & Southern Railway.
- Colorado Midland Railway.
- Delaware & Hudson Company.
- Delaware, Lackawanna & Western Railroad.
- Denver & Rio Grande Railroad.
- El Paso & Southwestern System.
- Erie Railroad.
- Grand Trunk Railway System.
- Illinois Central Railroad.
- Kansas City, Mexico & Orient Railway.
- Kansas City Southern Railway.
- Lake Erie & Western Railroad.
- Lake Shore & Michigan Southern Railway.
- Lehigh Valley Railroad.
- Louisville & Nashville Railroad.
- Michigan Central Railroad.
- Minneapolis, St. Paul & Sault Ste. Marie Railway.
- Missouri, Kansas & Texas Railway.
- Missouri Pacific Railway.
- New York Central & Hudson River Railroad.
- New York, Chicago & St. Louis Railroad (Nickel Plate).
- New York, New Haven & Hartford Railroad.
- 1343 Norfolk & Western Railway.
- Northern Pacific Railway.
- Oregon Short Line.
- Oregon-Washington Railroad & Navigation Co.
- Pennsylvania System.
- Philadelphia & Reading Railway.
- Pittsburgh, Cincinnati, Chicago & St. Louis Ry.
- Queen & Crescent Route.
- St. Louis & San Francisco Railroad.
- St. Louis, Iron Mountain & Southern Ry.
- St. Louis Southwestern Railway.
- San Pedro, Los Angeles & Salt Lake Railroad.
- Seaboard Air Line Railroad.
- Southern Railway.
- Toledo, Peoria & Western Railway.
- Toledo, St. Louis & Western Railroad.

Union Pacific Railroad.  
 Vicksburg, Shreveport & Pacific Railway.  
 Wabash Railroad.  
 Western Pacific Railway.  
 West Shore Railroad.  
 Total, 59.

1344 DEFENDANTS' EXHIBIT (SPENCE) No. 60, APRIL 22, 1915.

Daily passenger-train service via Sunset Route.

March, 1883.—One through train daily in each direction between New Orleans and San Francisco.

Time between New Orleans and San Francisco:

Westbound: 5 days, 4 hours, 40 minutes.

Eastbound: 5 days, 4 hours, 55 minutes.

Time between New York and San Francisco:

Westbound: 7 days, 20 hours, 40 minutes.

Eastbound: 7 days, 17 hours, 55 minutes.

Time procured from schedules shown on pages 238, 239, and 356 of the Travelers' Official Guide, dated March, 1883.

December, 1885.—One through train daily in each direction between New Orleans and San Francisco.

Time between New Orleans and San Francisco:

Westbound: 4 days, 17 hours, 10 minutes.

Eastbound: 4 days, 14 hours, 10 minutes.

1345 Time between New York and San Francisco:

Westbound: 6 days, 22 hours.

Eastbound: 6 days, 21 hours, 10 minutes.

Time procured from schedules shown on pages 235, 236, and 439 of the Travelers' Official Guide dated December, 1885.

December, 1900.—One through train daily in each direction between New Orleans and San Francisco.

Time between New Orleans and San Francisco:

Westbound: 4 days, 1 hour, 30 minutes.

Eastbound: 3 days, 23 hours, 30 minutes.

Time between New York and San Francisco:

Westbound: 5 days, 17 hours, 15 minutes.

Eastbound: 5 days, 16 hours, 43 minutes.

NOTE.—During the winter months of 1900-1901 a Sunset Limited train was operated three times weekly in each direction.

Time procured from schedules shown on pages 517 and 798 of the Official Guide dated December, 1900.

1346 December, 1914.—Two through trains daily in each direction between New Orleans and San Francisco.

Time between New Orleans and San Francisco (Sunset Limited):

Westbound: 3 days, 6 hours, 30 minutes.

Eastbound: 3 days, 2 hours, 10 minutes.

Time between New York and San Francisco:

Westbound: 5 days, 1 hour, 55 minutes.

Eastbound: 4 days, 18 hours, 0 minutes.

Time procured from schedules shown on pages 811 and 1234 of the Official Guide dated December, 1914.

The time between New York and San Francisco via Southern Pacific steamers, twice weekly in each direction, is:

Westbound: 8 days, 6 hours, 30 minutes.

Eastbound: 8 days, 11 hours, 40 minutes.

1347 DEFENDANTS' EXHIBIT (SPENCE) No. 61, APRIL 22, 1915.

Daily passenger train service via Ogden route.

March, 1883.—No through train, but direct connections made daily at Omaha and Ogden.

Time between Chicago and San Francisco:

Westbound: 5 days, 1 hour, 10 minutes.

Eastbound: 4 days, 20 hours, 45 minutes.

Time between New York and San Francisco:

Westbound: 6 days, 5 hours, 30 minutes.

Eastbound: 6 days, 2 hours, 30 minutes.

Time procured from schedules shown on pages 171 and 247 of the Travelers' Official Guide dated March, 1883.

December, 1885.—No through train, but direct connections made daily at Omaha and Ogden.

Time between Chicago and San Francisco:

Westbound: 4 days, 15 hours, 10 minutes.

1348 Eastbound: 4 days, 13 hours, 50 minutes.

Time between New York and San Francisco:

Westbound: 5 days, 20 hours, 10 minutes.

Eastbound: 6 days.

Time procured from schedules shown on pages 221 and 311 of the Travelers' Official Guide dated December, 1885.

December, 1900.—Two through trains daily westbound and three daily eastbound between Chicago and San Francisco.

Time between Chicago and San Francisco (Overland Limited):

Westbound: 3 days, 2 hours, 15 minutes.

Eastbound: 2 days, 21 hours, 30 minutes.

Time between New York and San Francisco:

Westbound: 4 days, 4 hours, 15 minutes.

Eastbound: 4 days, 0 hours, 30 minutes.

Time procured from schedules shown on pages 176 and 519 of the Official Guide dated December, 1900.

1349 December, 1914.—Three through trains daily westbound and four daily eastbound between Chicago and San Francisco.

Time between Chicago and San Francisco (Overland Limited):

Westbound: 2 days, 17 hours, 10 minutes.

Eastbound: 2 days, 15 hours, 30 minutes.

Time between New York and San Francisco:

Westbound: 3 days, 18 hours, 25 minutes.

Eastbound: 3 days, 14 hours, 20 minutes.

Time procured from schedules shown on pages 235 and 809 of the Official Guide dated December, 1914.

1350 DEFENDANTS' EXHIBIT (SPENCE) No. 62, APRIL 22, 1915.

S—31.

Statement showing total tonnage from and to all territories moving via Ogden, as compared with movement to and from Atlantic seaboard territory, for the year ended June 30, 1914:

	Eastbound.		Westbound.		Total.	
	Tons.	%	Tons.	%	Tons.	%
Atlantic seaboard territory..	154, 229	20. 6	68, 916	11. 2	223, 145	16. 3
Other territories.....	592, 588	79. 4	549, 009	88. 8	1, 141, 597	83. 7
Total.....	746, 817	100. 0	617, 925	100. 0	1, 364, 742	100. 0

1351 DEFENDANTS' EXHIBIT (SPENCE) No. 63, APRIL 22, 1915.

S—1.

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via El Paso gateway (including relatively small amount of traffic interchanged with A., T. & S. F. Ry., at Deming, N. M.) between all points west of Ogden, Utah, open to traffic via Ogden gateway and Atlantic seaboard territory: Comprising all points east of a line from Toronto, via Buffalo and Pittsburgh, to Bristol, Tenn., and north of the line of the Norfolk & Western Railway from Bristol to the Atlantic Ocean, for the year ended June 30, 1914.

	Tons.	Revenue.
Eastbound .....	85, 059	1, 202, 109
Westbound .....	94, 737	1, 890, 083
Total east and west bound.....	179, 796	3, 101, 292

## 1352 DEFENDANTS' EXHIBIT (SPENCE) No. 64, APRIL 22, 1915.

## S—2.

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via El Paso gateway (including relatively small amount of traffic interchanged with A., T. & S. F. Ry., at Deming, N. M.) between all points west of Ogden, Utah, open to traffic via Ogden gateway and Middle West territory: Comprising all points on and east of the line of the C., R. I. & P. Ry., from Kansas-Oklahoma State line via McFarland and Belleville, Kansas, and Des Moines, Iowa, to St. Paul, north of the northern boundary of Oklahoma and Arkansas, north of the Ohio River and west of the Atlantic seaboard territory, for the year ended June 30, 1914:

	Tons.	Revenue.
Eastbound .....	222,325	1,838,626
Westbound .....	219,246	2,311,285
Total east and west bound.....	441,571	4,149,911

## 1353 DEFENDANTS' EXHIBIT (SPENCE) No. 65, APRIL 22, 1915.

## S—3.

Comparison of commercial freight tonnage and revenue of Southern Pacific Company on traffic moved by El Paso gateway with that moved by Ogden gateway between all points west of Ogden, Utah, open to traffic via Ogden on the one hand and Atlantic seaboard territory and Middle West territory on the other hand, for the year ended June 30, 1914.

## Atlantic seaboard territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound.....	85,059	1,202,109	154,229	926,433
Westbound.....	94,737	1,899,083	68,916	593,339
East and west bound.....	179,796	3,101,292	223,145	1,519,772

## Middle West territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound.....	222,325	1,838,626	368,975	2,576,384
Westbound.....	219,246	2,311,285	259,648	2,451,700
East and west bound.....	441,571	4,149,911	628,623	5,028,084

1354 DEFENDANTS' EXHIBIT (SPENCE) No. 66, APRIL 22, 1915.

## S—4.

Statement of commercial tonnage and revenue of Southern Pacific Company on traffic which originated, passed over, or was delivered on Central Pacific Railroad moving via Ogden gateway to and from Atlantic seaboard territory for the year ended June 30, 1914:

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound.....	154, 229	926, 433
Westbound.....	68, 916	593, 339
East and west bound.....	223, 145	1, 519, 772

1355 DEFENDANTS' EXHIBIT (SPENCE) No. 67, APRIL 22, 1915.

## S—5.

Statement of Commercial tonnage and revenue of Southern Pacific Company on traffic which originated, passed over, or was delivered on Central Pacific Railroad moving via Ogden gateway to and from Middle West territory:

	Tons.	Revenue.
Eastbound.....	368, 975	2, 570, 384
Westbound.....	259, 648	2, 451, 700
East and west bound.....	628, 623	5, 028, 084

1356 DEFENDANTS' EXHIBIT (SPENCE) No. 68, APRIL 22, 1915.

## S—6.

Comparison of commercial tonnage and revenue of Southern Pacific Company on traffic via El Paso and via Ogden which originated, passed over, or was delivered on Central Pacific Railroad to and from Atlantic seaboard territory and Middle West territory, for the year ended June 30, 1914.

[Even tons and dollars.]

Atlantic seaboard territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound.....	34, 812	646, 005	154, 229	926, 433
Westbound.....	50, 045	1, 093, 267	68, 916	593, 339
East and west bound.....	84, 857	1, 739, 272	223, 145	1, 519, 772

## Middle West territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound.....	31, 180	269, 457	368, 975	2, 576, 384
Westbound.....	63, 734	665, 035	259, 648	2, 451, 700
East and west bound.....	94, 914	934, 492	628, 623	5, 028, 084

1357 DEFENDANTS' EXHIBIT (SPENCE) No. 68½, APRIL 22, 1915.

## S—7

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via Ogden gateway, between all points in Nevada and Atlantic Seaboard Territory, for the year ended June 30, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound .....	28, 234	45, 651
Westbound .....	2, 138	30, 198
East and west bound.....	30, 372	75, 849

1358 DEFENDANTS' EXHIBIT (SPENCE) No. 69, APRIL 22, 1915.

## S—8.

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via Ogden gateway, between all points in Nevada and Middle West territory, for the year ended June 30, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound .....	16, 852	140, 071
Westbound .....	25, 898	286, 237
East and west bound.....	42, 750	426, 308

1359 DEFENDANTS' EXHIBIT (SPENCE) No. 70, APRIL 22, 1915.

S—9.

Comparison of commercial tonnage and revenue of Southern Pacific Company on traffic moved via El Paso and Ogden gateways between all points in Nevada and Atlantic seaboard territory and Middle West territory for the year ended June 30, 1914.

[Even tons and dollars.]

## Atlantic seaboard territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound.....	0	0	28,234	45,651
Westbound.....	539	13,281	2,138	30,198
East and west bound.....	539	13,281	30,372	75,849

## Middle West territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound.....	0	0	16,852	140,071
Westbound.....	30	959	25,898	286,237
East and west bound.....	30	959	42,750	426,308

1360 DEFENDANTS' EXHIBIT (SPENCE) No. 71, APRIL 22, 1915.

S—10.

Statement of commercial tonnage and revenue of Southern Pacific Company on traffic moved via Ogden gateway between all points in Oregon and beyond and in California north of Roseville, Davis, Elmira, Suisun, and South Vallejo and Atlantic seaboard territory for the year ended June 30, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound .....	27,517	167,059
Westbound .....	4,684	40,233
East and west bound.....	32,201	207,292



1361 DEFENDANTS' EXHIBIT (SPENCE) No. 72, APRIL 22, 1915.

## S—11.

Statement of commercial tonnage and revenue of Southern Pacific Company on traffic moved via Ogden gateway between all points in Oregon and beyond and in California north of Roseville, Davis, Elmira, Suisun, and South Vallejo and Middle West territory for the year ended June 30, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound .....	86, 165	471, 253
Westbound .....	17, 362	186, 738
East and west bound .....	103, 527	657, 991

1362 DEFENDANTS' EXHIBIT (SPENCE) No. 73, APRIL 22, 1915.

## S—12.

Comparison of tonnage and revenue of Southern Pacific Company via El Paso as shown in petitioner's Exhibits Nos. 55 and 56 with that via Ogden on traffic moved between Atlantic seaboard territory and Middle West territory on one hand and points in Oregon and beyond, and in California north of Roseville, Davis, Elmira, Suisun, and South Vallejo for the year ended June 30, 1914:

## Atlantic seaboard territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound .....	22, 161	426, 324	27, 517	167, 059
Westbound .....	2, 801	84, 260	4, 684	40, 233
East and west bound .....	24, 962	510, 584	32, 201	207, 292

## Middle West territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound .....	5, 351	51, 384	86, 165	471, 253
Westbound .....	13, 122	124, 919	17, 362	186, 738
East and west bound .....	18, 473	176, 303	103, 527	657, 991

## 1363 DEFENDANTS' EXHIBIT (SPENCE) No. 74, APRIL 22, 1915.

## S—13.

Statement of commercial tonnage and revenue of Southern Pacific Company on traffic moved via Ogden gateway between San Francisco and Oakland, California, and Atlantic seaboard territory for the year ended June 30, 1914:

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound .....	14, 025	127, 697
Westbound .....	44, 214	380, 256
East and west bound.....	58, 239	507, 953

## 1364 DEFENDANTS' EXHIBIT (SPENCE) No. 75, APRIL 22, 1915.

## S—14.

Statement of commercial tonnage and revenue of Southern Pacific Company on traffic moved via Ogden gateway between San Francisco and Oakland, California, and Middle West territory for the year ended June 30, 1914:

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound .....	52, 432	336, 713
Westbound .....	126, 237	1, 140, 547
East and west bound.....	178, 669	1, 477, 260

## 1365 DEFENDANTS' EXHIBIT (SPENCE) No. 76, APRIL 22, 1915.

## S—15.

Comparison of commercial tonnage and revenue of Southern Pacific Company on traffic moved via El Paso gateway and via Ogden gateway between San Francisco and Oakland, California, and Atlantic seaboard territory and Middle West territory, for the year ended June 30, 1914:

[Even tons and dollars.]

## ATLANTIC SEABOARD TERRITORY.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound .....	4, 598	95, 841	14, 025	127, 697
Westbound .....	38, 933	920, 502	44, 214	380, 256
East and west bound.....	43, 531	1, 016, 343	58, 239	507, 953

## MIDDLE WEST TERRITORY.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound.....	10, 295	76, 209	52, 432	336, 713
Westbound.....	40, 497	433, 465	126, 237	1, 140, 547
East and west bound.....	50, 792	509, 674	178, 669	1, 477, 260

1366 DEFENDANTS' EXHIBIT (SPENCE) No. 77, APRIL 22, 1915.

S—17.

Statement of commercial tonnage moved via El Paso and Ogden between points in California, Banning to Mojave and Santa Barbara, inclusive, and points in Oregon on one hand and points in Atlantic seaboard territory on the other, for the year ended June 30, 1914:

	Eastbound.	Westbound.	Total.
	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>
Southern California.....	41, 105	37, 617	78, 722
Oregon.....	7, 533	1, 743	9, 276

1367 DEFENDANTS' EXHIBIT (SPENCE) No. 78, APRIL 22, 1915.

S—16.

Statement of commercial tonnage moved via El Paso and Ogden between points in California, Banning to Mojave and Santa Barbara, inclusive, and points in Oregon on one hand and points in Middle West territory on the other, for the year ended June 30, 1914:

	Eastbound.	Westbound.	Total.
	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>
Southern California.....	178, 978	139, 724	318, 702
Oregon.....	1, 878	10, 716	12, 594

1368 DEFENDANTS' EXHIBIT (SPENCE) No. 79, APRIL 22, 1915.

S—18.

Statement of commercial tonnage moved between points west of Ogden, Utah, south of the Oregon-California State line and north

of Mojave and Santa Barbara on the one hand and Middle West territory on the other hand, for the year ended June 30, 1914:

	Eastbound.		Westbound.		Total.	
	Tons.	Per cent.	Tons.	Per cent.	Tons.	Per cent.
Via Ogden.....	331, 218	80. 7	241, 407	73. 5	572, 625	77. 5
Via Sunset-Gulf.....	1, 244	. 3	13	0	1, 257	. 2
Via New Orleans.....	1, 177	. 3	11, 278	3. 4	12, 455	1. 7
Via El Paso and other gateways east thereof except New Orleans.....	76, 777	18. 7	75, 754	23. 1	152, 531	20. 6
Total.....	410, 416	100	328, 452	100	738, 868	100

1369 DEFENDANTS' EXHIBIT (SPENCE) No. 80, APRIL 22, 1915.

S—26.

Statement of commercial tonnage moved between points west of Ogden, Utah, south of the Oregon-California State line and north of Mojave and Santa Barbara on the one hand and Atlantic seaboard territory on the other hand, for the year ended June 30, 1914:

	Eastbound.		Westbound..		Total.	
	Tons.	Per cent.	Tons.	Per cent.	Tons.	Per cent.
Via Ogden.....	140, 900	73. 4	66, 101	53. 1	207, 001	65. 4
Via Sunset-Gulf.....	37, 166	19. 3	41, 762	33. 5	78, 928	24. 9
Via New Orleans.....	603	. 3	2, 174	1. 7	2, 777	. 9
Via El Paso and other gateways east thereof except New Orleans.....	13, 362	7	14, 546	11. 7	27, 908	8. 8
Total.....	192, 031	100	124, 583	100	316, 614	100

1370 DEFENDANTS' EXHIBIT (SPENCE) No. 81, APRIL 22, 1915.

S—37.

Statement of commercial freight interchanged between Southern Pacific Company and Union Pacific Railroad Company at Ogden, Utah, for the fiscal years ended June 30, 1913 and 1914:

	1913, tons.	1914, tons.
Eastbound.....	606, 122	598, 035
Westbound.....	547, 861	460, 406

## 1371 DEFENDANTS' EXHIBIT (SPENCE) No. 82, APRIL 22, 1915.

S—22.

Comparison of tonnage to and from Middle West territory moved via El Paso, which had origin or destination on Central Pacific bond-aided line, with tonnage moved via Ogden, which had origin or destination on Southern Pacific or Central Pacific nonbond-aided lines, for the year ended June 30, 1914:

	Eastbound.	Westbound.	Total.
Via El Paso.....	5, 765	9, 233	14, 998
Via Ogden.....	329, 589	233, 689	563, 278

Movement via Ogden is over 3,755% of movement via El Paso.

## 1372 DEFENDANTS' EXHIBIT (SPENCE) No. 83, APRIL 22, 1915.

S—30.

Comparison of tonnage to and from Atlantic seaboard territory moved via El Paso, which had origin or destination on Central Pacific bond-aided line, with tonnage moved via Ogden, which had origin or destination on Southern Pacific or Central Pacific nonbond-aided line, for the year ended June 30, 1914:

	Eastbound.	Westbound.	Total.
Via El Paso.....	6, 237	7, 586	13, 723
Via Ogden.....	112, 306	66, 547	178, 853

Movement via Ogden is 1,303% of the movement via El Paso.

## 1373 DEFENDANTS' EXHIBIT (SPENCE) No. 84, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Chicago, Milwaukee & St. Paul Railway Company.

## 1374 DEFENDANTS' EXHIBIT (SPENCE) No. 85, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Union Pacific Railroad Company.

**1375 DEFENDANTS' EXHIBIT (SPENCE) No. 86, APRIL 22, 1915.**

Map showing alternative competing routes for transcontinental traffic of the Missouri Pacific system, consisting of the Missouri Pacific Railway, the Denver & Rio Grande Railroad, and the Western Pacific Railway.

**1376 DEFENDANTS' EXHIBIT (SPENCE) No. 87, APRIL 22, 1915.**

Map showing alternative competing routes for transcontinental traffic of the Atchison, Topeka & Santa Fe Railway.

**1377 DEFENDANTS' EXHIBIT (SPENCE) No. 88, APRIL 22, 1915.**

Map showing alternative competing routes for transcontinental traffic of the Great Northern Railway.

**1378 DEFENDANTS' EXHIBIT (SPENCE) No. 89, APRIL 22, 1915.**

Map showing alternative competing routes for transcontinental traffic of the Chicago and North Western Railway.

**1379 DEFENDANTS' EXHIBIT (SPENCE) No. 90, APRIL 22, 1915.**

Map showing alternative competing routes for transcontinental traffic of the Chicago, Rock Island & Pacific Railway.

**1380 DEFENDANTS' EXHIBIT (SPENCE) No. 91, APRIL 22, 1915.**

Map showing alternative competing routes for transcontinental traffic of the Chicago, Burlington & Quincy Railroad.

**1381 DEFENDANTS' EXHIBIT (SPENCE) No. 92, APRIL 22, 1915.**

Map showing alternative competing routes for transcontinental traffic of the Pennsylvania Railroad system.

**1382 DEFENDANTS' EXHIBIT (SPENCE) No. 93, APRIL 22, 1915.**

Map showing alternative competing routes for transcontinental traffic of the Baltimore & Ohio Railroad system.

**1383 DEFENDANTS' EXHIBIT (SPENCE) No. 94, APRIL 22, 1915.**

Map showing alternative competing routes for transcontinental traffic of the New York Central lines.

[1—Extract from the Commercial and Financial Chronicle, February 18, 1899, volume 68, pages 329 and 330.]

**Central Pacific R. R.—Settlement—Official announcement—Readjustment plan.**—Messrs. Speyer & Co. make the following announcement: "The agreement of settlement of the Central Pacific R. R. Co. has been executed by the railroad company and by the Government commission, and approved by the President. The agreement provides for the payment in full of the debt of the railroad company, principal and interest, amounting to about \$59,000,000, in twenty equal half-yearly installments, running with 3 per cent interest, the first one to mature August 1, 1899. The twenty notes given by the railroad company to correspond with these installments are to be secured by an equal amount of first refunding bonds, which are to be created under the readjustment plan shortly to be promulgated here and in Europe. The readjustment of the financial affairs of the railroad company is to be in charge of Messrs. Speyer & Co., New York; Messrs. Speyer Brothers, London; Laz Speyer Ellisen, Frankfurt-on-the-Main; Messrs. Teixeira de Mattos Brothers, Amsterdam, and the Deutsche Bank of Berlin."

The sum due as of Feb. 1 was \$58,812,714, composed of the following items:

Central Pacific debt February 1, \$25,885,120 principal and \$36,604,385 interest, less \$9,100,452 of judgments, bonds, and sinking fund, leaving net liability \$53,389,052. The amount due by the Western Pacific on the same date was \$5,423,662, making the total sum due by the two roads \$58,812,714.

The agreement will obviate the necessity of foreclosure.

The act under which the settlement is made was passed by Congress last July, and was given in full in our issue of July 2, page 27. The act appoints the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General a commission with full power to settle the indebtedness, provided that any and all settlements shall be submitted in writing to the President for his approval or disapproval, and unless approved by him shall not be binding. (V. 67, pp. 1157, 1163.)

1386 [2—Extract from the Commercial and Financial Chronicle, February 25, 1899, volume 68, pages 352 to 354.]

### The Central Pacific reorganization plan.

The plan just submitted for the reorganization of the Central Pacific property seems thorough and complete. It accomplishes three distinct objects, each important in itself and essential to any

sound and comprehensive scheme for establishing the property firmly in public estimation and confidence. In the first place, it secures that prime prerequisite, the adjustment and settlement of the indebtedness owing to the United States. In the second place, it accomplishes that other and hardly less desirable object, the placing of the relations between the Central Pacific and the Southern Pacific on a definite and assured basis, removing cause for future misunderstanding and controversy. In the third place, it provides for the complete refunding at a lower rate of interest of all the bonded indebtedness of the Central Pacific, while at the same time furnishing needed cash for present and future capital wants.

1387 As far as the settlement with the United States is concerned, the country certainly has no reason to complain. The Government gets the full amount of its claim, both principal and interest, namely \$58,812,715. Such favorable terms for it were considered as hardly within the range of probabilities, or even possibilities, only a short time ago. By this we mean that few thought the company could safely undertake to carry a burden of obligations such a settlement on such a basis involved. No doubt, if the claim had been held by a private creditor it could not have been collected in full. A spirit of equity and fairness would have required part abatement of the claim. In the case of the United States as a public creditor, the occasion for leniency and concession was tenfold greater. The country as a whole, and the Government in particular, has derived incalculable advantages and blessings from the building of the road as part of the first route across the continent. Besides this, the United States is strong and prosperous, and would have suffered no hardship or inconvenience if it had agreed to forego a portion of its large claim.

But Congress was unyielding. Its action was controlled by those antagonistic to the road. These people succeeded in having a  
1388 law passed forbidding a settlement involving compromise or concession. The full pound of flesh was demanded—nothing less. This was the situation confronting the security holders and those administering the property. The company was practically helpless. The terms of the law were rigid and severe. There was no alternative but to accept them, merciless and unfair though they certainly were and onerous as they seemed likely to prove. And quick action, too, was called for, since this law declares that a settlement, even on these harsh terms, must be effected within twelve months from the date of the passage of the act (that is, July 7, 1898), otherwise the President was directed to begin foreclosure proceedings under the Government lien. This latter would have meant the wiping out of the junior equities. Nothing remained but to try and avert this unfortunate contingency, and a method has now been



devised for meeting the requirements of the law, while placing the prospects for the security holders on a very encouraging basis.

Several fortuitous circumstances have opportunely come in to facilitate the operation, and to this must be ascribed the fact that a task which but a short while back seemed impossible is now being confidently undertaken by a very shrewd and able syndicate of 1389 financiers. Traffic and revenues have very considerably increased during the last eighteen months, so there is a much larger basis of earnings to start with. Then the outlook for industrial interests is now altogether assuring, where previously it had been clouded by many uncertainties. Furthermore, the rate of interest in this country has been steadily declining, so that money can be borrowed on lower and more advantageous terms than a short time back. Of the two new issues of bonds provided under the reorganization, one bears only 4 per cent interest, the other but 3½ per cent. The old bonds carried 5 to 6 per cent interest. Thus the saving to be effected in annual charges in this way is important. Then it must also be remembered that the Central Pacific has held large corporate sinking funds, and the assets in these funds count as an important offset to the increased obligations incurred in the settlement of the Government claim. A statement in the reorganization plan shows that the securities in these sinking funds, and which are to be deposited as part security for the new 3½ per cents, aggregate \$12,553,000 and yield a present annual income of \$689,680.

The reorganization scheme is in many respects a clever and 1390 ingenious contrivance. The payments to the Government are arranged in exact accordance with the new law. And here a little study will show that our lawmakers, in their desire to be severe and give no quarter, have overreached themselves. The law provides that in any settlement in the "final payment" and "full discharge" of the indebtedness "shall not be postponed to exceed ten years, and the whole amount, principal and interest, shall be paid in equal semiannual installments within the period so limited." In compliance with these provisions, the agreement with the Government provides for the payment of the debt in twenty equal semiannual installments. The payments are to be evidenced by twenty notes of the railroad company, falling due one every six months beginning August 1, 1899, and these notes are to be secured by an equal amount at face value of the new first refunding mortgage four per cent gold bonds. The ordinary way of settling would have been to make a direct tender of the new bonds. The terms of the law of Congress made that impossible, so notes had to be given instead, with the new bonds as security. But the notes bear only 3 per cent interest, while the bonds bear 4 per cent. The result is a saving

of one per cent per annum to the company. Messrs. Speyer & Co. have agreed to purchase the \$11,762,543 of these notes earliest maturing; that, however, will still leave \$47,050,172 of notes in possession of the Government. Eventually these notes will be replaced by the new refunding bonds, but in the meantime the difference in interest will mean a saving to the company of \$470,000 per year in the charges.

One other good result will follow, and in this sense the rigorous terms of the law will prove a not unmixed evil. Had payment been in bonds, the Government might have held them indefinitely and thus retained its interest in the property, furnishing occasion for a continuation of the meddlesome interference with the affairs of the road on the part of Congress which has characterized its course in the past. As it is, a definite limit is set to the time within which the pecuniary concern of the United States may continue. After ten years Government interest in the property will cease, and the United States will be totally eliminated as a factor in the road's affairs. Indeed, this may be said to be the situation from the start under the new arrangement, for with the indebtedness placed on a fixed basis the only concern the Government has is to see that the semi-annual payments are met, and that, of course, by the arrangement is put beyond question.

The reorganization scheme provides, as already indicated, for the taking up of all the existing bond issues of the Central Pacific Company. These will be replaced by two general issues—(1) \$100,000,000 of first refunding mortgage 4 per cent gold bonds, to run not less than forty-five years, and (2) \$25,000,000 of 3½ per cent mortgage gold bonds, to run thirty years. The latter as a lien upon the property and plant of the new company will be subordinate to the first refunding mortgage bonds, but, on the other hand, will have a prior lien upon the existing sinking-fund assets (amounting, as stated above, to \$12,553,000 in securities, besides a small amount of cash), and also a lien upon the lands and the land notes covered by the mortgage securing the present land bonds. The new company will likewise issue \$20,000,000 of 4 per cent cumulative preferred stock, mainly for betterments and additions to the property, \$5,000,000 being expressly reserved for this purpose, to be used at the rate of not exceeding \$200,000 per annum. This preferred stock will not be sold, but will all be taken by the Southern Pacific Company, which will issue and sell its collateral trust bonds against the same, bearing 4 per cent interest. Finally there will be \$67,275,500 of new common stock, the same as at present. Under the terms of the arrangement with the Southern Pacific the latter will guarantee both the new issues of Central Pacific bonds.

The fixed charges of the new company will be heavier than those of the old company. This follows from the fact that the payment to the United States is so large and includes such great arrearages of interest (the payment of \$58,812,715 being more than double the original principal of the subsidy bonds issued in aid of the road and which amounted to only \$27,855,680), which arrears of interest have now to be capitalized. Part of the additional burden falls on the Southern Pacific Company, which agrees to issue altogether \$36,819,000 of the collateral trust bonds referred to above. But the charges on that account may be disregarded in considering the position of the new Central Pacific Company by itself. For the year ending June 30, 1898, the fixed charges were \$4,269,905. The charges of the reorganized company, when the whole \$100,000,000 of new 4s and \$25,000,000 of 3½s have been issued, will be \$4,875,000. For the present, however, there will be a saving of \$470,000 in the way noted above on the notes issued to the Government, reducing the total of charges on the Central Pacific to \$4,405,000, as against the \$4,269,000 actually paid for the late year. The direct increase, therefore, will be comparatively small.

As against the \$4,405,000 of charges which the new company will have to meet, the Central Pacific's net earnings from operations in the late year were \$5,658,033. For the 10½ years ending last June the average of the net earnings was \$4,893,259. In both cases this is independent of the income from the securities in the sinking funds, which, as we have seen, at present amounts to \$689,680 per year. The position of the new company would thus appear to be entirely safe and secure. It would seem, too, that the inducement to the old bondholders to take the new securities offered them in exchange for their present obligations is strong. The terms vary for the different issues, larger or smaller proportions of the 4s and the 3½s being given in each case, depending upon the merits and position of the old security. But the old bondholders are not tied down to the terms of exchange. If they prefer, the reorganization syndicate will purchase their holdings for cash—offering for some issues par and accrued interest, for others 105 and interest, and for still others 109 and interest. Of the \$100,000,000 of 4s, \$47,056,000 will be retained against the 3 per cent notes given the Government, \$51,253,500 will go in partial exchange for existing bonds, and \$1,690,500 will be purchased by the syndicate to provide the cash requirements of the plan. Of the 3½ per cents, \$13,695,000 will go in partial exchange for existing bonds and \$11,305,000 will be purchased by the syndicate.

The cash requirements are put altogether at \$21,420,100. Of this, \$11,762,543 represents the money needed to take up the first four

semiannual notes given the Government and \$9,657,556 represents the sum required for new equipment, improvements, and other purposes. To raise this large sum of money the syndicate purchases, besides the \$1,690,500 of refunding 4s and \$11,305,000 of new 3½s, the amount of \$12,000,000 of the new Southern Pacific collateral trust bonds to be created. It is estimated that in this way upwards of \$4,500,000 cash will be provided which will be immediately available for improvements.

We have stated above that one of the merits of the plan is that it provides a definite adjustment of the relations with the 1896 Southern Pacific as well as with the United States. This is accomplished by giving Southern Pacific stock in exchange for Central Pacific. The argument in opposition to Southern Pacific control of Central Pacific has always been that the former had an alternative route in its line via El Paso and that it was to its interest to favor this line at the expense of the Central Pacific route via Ogden. But as stockholders of the Southern Pacific it will be immaterial to the present shareholders of the Central Pacific which route is developed. They will have a proprietary interest in both, and all cause for complaint will be removed.

The proposition to the Central Pacific shareholders looks very attractive and certainly surpasses anything that was deemed probable by outsiders only a few months ago. If the shares had been called upon to pay an assessment of \$20 or \$25 a share, hardly anyone would have been surprised. Instead they are asked for a cash payment of only \$2, and in return are given share for share of Southern Pacific stock and 25 per cent of collateral trust 4 per cents. As to the value of Southern Pacific stock, that company in the late year showed a surplus above charges and expenses of \$4,122,602. Even after deducting \$1,299,258 spent for betterments and additions, the 1897 surplus was \$2,823,344. The Central Pacific surplus for the same twelve months, to be added to this, was \$1,561,464. But as against the latter there is the increase in charges to be taken into account.

Central Pacific's own charges, we have seen, will be increased only \$135,095. The interest on the collateral trust bonds of the Southern Pacific will, of course, be an entirely new charge. The plan, as already remarked, provides altogether for \$36,819,000 of these bonds, but only \$23,819,000 will be required at present—\$16,819,000 being given to Central Pacific shareholders and \$12,000,000 being sold to the syndicate. On this \$28,819,000 of bonds the annual interest charge will be \$1,152,760, but that will be offset by the \$690,000 income (roughly) on the securities in the Central Pacific sinking funds, making a net increase of \$462,760, which, added to the \$135,095 increase in the Central Pacific's own charges, gives an aggregate augmentation in charges of \$597,855. Deducting this from

the \$1,561,464 surplus for the Central Pacific, as above, we have \$963,609 to be added to the Southern Pacific's own surplus of \$2,823,344, making a total of \$3,786,953; that is to say, the new charges when applied to last year's earnings show a surplus in the 1398 sum of over 3 $\frac{1}{4}$  million dollars after the expenditure of 1 $\frac{1}{2}$  million dollars (\$1,299,258 by the Southern Pacific and \$162,250 by the Central Pacific) for betterments and additions. Of course the aggregate of Southern Pacific stock will be increased. At present the total is \$121,070,810; the amount issuable against Central Pacific shares will add \$67,275,500, and \$10,118,184 is issuable against the stocks of Southern Pacific proprietary roads not yet exchanged, bringing the total up to \$198,464,494.

1399 [3—Extract from the Commercial and Financial Chronicle, February 25, 1899, volume 68, pages 378 and 379.]

Central Pacific R. R.—Southern Pacific Company—Readjustment plan—Control of Stock—Guaranty.—Under date of Feb. 8, 1899, Messrs. Speyer & Co. and their associates have prepared a plan for the thorough readjustment of the finances of the Central Pacific R. R. Co. The plan contemplates the acquisition of a controlling interest in the stock by the Southern Pacific Co., and immediately thereupon the guaranteeing by that company of the bonds of two new Central Pacific issues.

As stated last week, a settlement has been negotiated with the United States Government of its claim against the company, per agreement dated Feb. 1, 1899. The balance of the indebtedness due to the United States, as of Feb. 1, 1899, as therein stated, amounted, principal and interest, to \$58,812,715.48, which is to be evidenced by twenty 3 per cent notes of the Central Pacific R. R. Co. falling due one every six months, beginning Aug. 1, 1899, to be secured by an equal amount of new first refunding mortgage 4s. Messrs.

Speyer & Co. have agreed to purchase \$11,762,543 of said notes 1400 earliest maturing, Aug. 1, 1899, to Feb. 1, 1901, so that the amount of said first refunding mortgage 4s to be retained as collateral by the United States will be \$47,056,000.

In order to create these new first refunding mortgage gold bonds it is proposed promptly to readjust the financial affairs of the railroad company, and for this purpose the following is now promulgated. A syndicate has been formed to provide all the cash requirements under the plan.

New securities.—The plan provides for the creation of the following new securities:

- (1) Securities to be issued by present Central Pacific R. R. Company or its successor.

First refunding mortgage 4 per cent gold bonds, to run not less than forty-five years, to bear interest from Aug. 1, 1899, free of taxes,

and to be secured by a mortgage upon all the railroads, terminals, and equipment now owned by the Central Pacific R. R. Co., covering about 1,349 miles of first track and about 365 miles of second track and sidings, or by deposit as collateral security therefor of at least 90 per cent of the present outstanding first mortgage bonds of the Central Pacific R. R. Co. of California, and the Western Pacific

R. R. Co., and of at least 75 per cent of the aggregate 1401 of all the now outstanding bonds of the Central Pacific R. R.

Co. and of all now outstanding bonds of the divisional companies by the consolidation whereof it was formed, including such first-mortgage bonds of the Central Pacific R. R. Co. of California and Western Pacific R. R. Co., said new bonds to be guaranteed by endorsement as to principal and interest by the Southern Pacific Company upon delivery to that company of the controlling interest in the stock of the Central Pacific, as below stated.

Total issue of bonds.....	\$100,000,000
Of which to be retained by U. S. Government as collateral for 3 per cent notes.....	47,050,000
In partial exchange for existing bonds.....	51,253,500
Purchased by syndicate to provide cash requirements of plan....	1,690,500

3½ per cent mortgage thirty-year gold bonds, to bear interest from Aug. 1, 1899, free of taxes, and to be secured by a second lien upon all the properties covered by the first refunding mortgage above mentioned, and also by deposit with the trustee as acquired of all securities and moneys held in any sinking fund of the Central

Pacific R. R. Co., and by a trust deed upon all the lands now 1402 covered by the mortgage dated Oct. 1, 1870, said new bonds to be guaranteed by endorsement as to principal and interest by Southern Pacific Company upon delivery to that company of the controlling interest in the stock of the Central Pacific as below stipulated.

Total issue.....	\$25,000,000
Of which in partial exchange for existing bonds.....	13,695,000
Purchased by syndicate to provide cash requirements of plan....	11,305,000
Preferred stock, 4 per cent cumulative, to be delivered to the Southern Pacific Co. in consideration of the issue of an equal amount at par value of the Southern Pacific Company's 4 per cent gold bonds hereinafter mentioned.....	20,000,000
Of which to be delivered on completion of readjustment.....	12,000,000
Reserved to be delivered only to provide additional funds, if required, for the payment of said 3 per cent notes to the United States, and thereafter only for betterments and additions.....	3,000,000
Reserved to be delivered for improvements and additions at not exceeding \$200,000 yearly.....	5,000,000
1403 Common stock to be sold to syndicate and offered for sale to depositors of present common stock upon payment of \$2 per share deposited.....	67,275,500

## (2) Securities to be issued by Southern Pacific Company.

4 per cent collateral trust gold bonds bearing interest from Aug. 1, 1899, free of taxes, and having fifty years to run (but subject to redemption at any time, at the option of the Southern Pacific Co., at par and accrued interest, upon six months' notice). Said bonds to be secured by a collateral trust mortgage covering all the new preferred stock issued and delivered, and also all the common stock of the railroad company purchased by the Southern Pacific Co.:

Total Issue.....	\$36,819,000
Of which as part consideration for the common stock of the railroad company, being one-fourth of the par value thereof.....	16,819,000
In consideration of new preferred stock of the railroad company as above stated (\$3,000,000 reserved as stated in plan).....	15,000,000
Reserve for betterments or additions to the railroad company's properties at not exceeding \$200,000 per annum, against the 1404 issue of an equal amount at par value of the new preferred stock.....	5,000,000
Common stock, as part consideration for like amount of railroad company stock, if paying assessment of \$2 per share.....	67,275,500

Exchange of securities.—The basis of exchange is shown in the following table:

Existing bonds to be deposited.	Each \$1,000 receives—			
	Cash. <sup>1</sup>	Ref'g 4s.	New 3½s.	Or all cash.
Cent. Pac. R. R. Co. of Cal. 1st M., series A, \$2,995,000.....	\$33.33	\$1,000	\$50	<sup>2</sup> \$1,000
Series B, C, D, E, F, G, H, and I, \$22,886,000.....	29.17	1,000	50	<sup>2</sup> 1,000
West. Pac. R. R. Co. 1st M., series A and B, \$2,735,000.....	35.00	1,000	50	<sup>2</sup> 1,000
Cent. Pac. R. R. (San Joaquin Valley Branch) 1st M., \$6,080,000.....	50.00	1,000	75	<sup>2</sup> 1,000
Cent. Pac. R. R. land bonds, \$2,134,000.....	41.67	500	700	<sup>2</sup> 1,000
Fifty-year 6s, \$56,000.....	50.00	500	900	<sup>2</sup> 1,050
Fifty-year 5s, \$10,245,000.....	41.67	500	800	<sup>2</sup> 1,050
Cal. & Oregon R. R. and Cent. Pac. R. R. 1st M., A and B, \$10,340,000.....	29.17	1,000	200	<sup>2</sup> 1,090

1405 <sup>1</sup> Interest from the due dates of the last coupons matured prior to Feb. 1, 1899, at the same rates, up to the date when the new bonds begin to bear interest—namely, Aug. 1, 1899.

<sup>2</sup> Payable in New York, with accrued interest.

Existing stock, if deposited.....	Each \$100—		
	If paying assess—	Will receive—	
		So. Pac. stock.	So. Pac. 4s.
Central Pacific stock, \$67,275,500.....	\$2.00	\$100	\$25

The London shareholders' committee, F. G. Banbury, Esq., chairman, representing a majority of the outstanding shares, has agreed to the purchase of said stock by the Southern Pacific Co. and has deposited the shares with the readjustment managers under the plan of readjustment.

Guaranty, when to be endorsed.—The Southern Pacific Company agrees that upon delivery to it of \$12,000,000 of new preferred stock and at least 377,194 shares of the 672,755 shares of common stock of the railroad company, it will simultaneously guarantee unconditionally by endorsement the payment of the principal and interest of the first refunding mortgage 4 per cent gold bonds and of the 3½ per cent mortgage gold bonds.

Position of reorganized company.—A circular shows that 1406 under the plan the Central Pacific Company's fixed charges will aggregate \$4,875,000. On the 4 percents held by the Government, however, there will be a saving of 1 per cent per annum until Feb. 1, 1901, or about \$470,000 annually, while the Central Pacific sinking funds will earn about \$695,000, making the net charges \$3,710,000. The Southern Pacific charges will be increased by the interest on \$28,819,000 new bonds, or \$1,152,760, making the total net annual interest charge on account of the Central Pacific \$4,862,760, as against \$4,269,905 for the year ending June 30, 1898, or an increase of \$592,855. Against this increase there was a surplus on the Central Pacific for the last year, after charging all betterments to earnings, of \$1,561,463, and a surplus on the Southern Pacific of \$2,823,344, a total of \$4,384,807.

The Southern Pacific's present stock is \$121,070,810; issuable against Central Pacific stock, \$67,275,500; issuable against stocks of proprietary companies not yet exchanged, \$10,118,184; making a total stock issue of \$198,464,494. See further particulars in advertising columns.

"It thus appears that the fixed charges of the new company on completion of the readjustment will be well within the past net income of the property. It is estimated that under the read- 1407 justment upwards of \$4,500,000 cash will be provided, which will be immediately available for improvements on the properties of the railroad company."

Deposits.—Participation under the plan of readjustment in any respect whatsoever is dependent upon the deposit of securities with Speyer & Co., of New York, the depositary, or their associates, within the required time. Bonds must carry all coupons maturing after Feb. 1, 1899.

To facilitate the carrying out of the plan, holders of certificates of deposit issued under bondholders' agreement dated Aug. 14, 1897,



representing Central Pacific first-mortgage bonds, series A, B, C, D, E, F, G, H, and I should present their certificates at the offices of any of the readjustment managers to be stamped as assenting to the plan. Holders who do not withdraw their bonds prior to March 23 will be held to have assented. Any holder desiring to accept cash rather than the new securities must present his securities of deposit to be stamped accordingly on or before March 23, 1899.

Similarly, holders of certificates of deposit issued under bondholders' agreement dated Oct. 1, 1896, representing Central Pacific fifty-year 5 per cent mortgage bonds, due April 1, 1939, should present their certificates for stamping.

1408 Securities sold.—Speyer & Co. announce that, as syndicate managers, they have sold all of the new Central Pacific and Southern Pacific bonds which the syndicate agreed to take under the Central Pacific readjustment plan. Of the aforesaid bonds, \$8,000,000 of the \$12,000,000 Southern Pacific collateral trust 4s were purchased by Brown Brothers & Co. and F. S. Smithers & Co. (V. 68, p. 329; v. 67, p. 839, 844.)

1400 [4—Extract from the Commercial and Financial Chronicle, March 4, 1899, volume 68, page 397.]

As expected, the Central Pacific readjustment is proving an unqualified success. This week the American shareholders, as represented by the certificates of deposit of the Central Trust Company, unanimously adopted a resolution expressing approval of the Speyer plan and directing the committee, of which Mr. August Belmont is chairman, to conclude an agreement and accept the plan on behalf of the shareholders. There have been few other undertakings of equal magnitude where success has followed so quickly upon the heels of the official promulgation of the plan. Seldom, too, has such general satisfaction been expressed by all parties in interest. And it must be admitted that the terms offered are favorable beyond the most sanguine expectations. When one considers how dubious the outlook appeared only a short time ago one can but marvel at the complete transformation which has been worked in the prospects of the company and in the situation of the security holders. The problem to be met was a difficult one. In the case of all the other transcontinental lines—the Northern Pacific, the Union Pacific, and the Atchi-  
1410 son—security holders were called upon to make important sacrifices. In each of these instances the shareholders were obliged to pay heavy assessments. The Central Pacific shareholders have not only escaped this, but they get what must be considered the equivalent of a handsome bonus, on a cash payment of only two dol-

lars per share, while all the other securities have been equitably and fairly dealt with.

We risk nothing in saying that such results would have been entirely out of the question except for the fact that Mr. C. P. Huntington and the banking house of Speyer & Co. have both stood behind the security holders, determined to protect them and see that they were not allowed to suffer. Mr. Huntington has at times been as harshly criticized by certain of the shareholders as he has been by the political agitators and demagogues of California. Yet he has repeatedly made important sacrifices on behalf of the Central Pacific, and in assenting to the present plan of readjustment has given proof that he regards the interests of that property as identical with those of every other portion of his vast system. As for the house of Speyer & Co., they deserve great credit for the solicitude and care displayed in looking after the Central Pacific security holders. To them also belongs the credit of having devised the plan. Few people appreciate the time and labor required not only in carrying out the financial requirements of an undertaking of this magnitude but in contriving and perfecting such a scheme on a basis which shall be at once just and in exact accordance with the requirements. We understand that the plan is the work of Mr. James Speyer, who for the last six or seven months has given all his time and attention to it. The scheme must be regarded as in every way a most clever contrivance. The problem to be solved was such as to call for the utmost skill and ingenuity and the exercise withal of great patience in the elaboration of the various details. Not only were there the security holders to provide for, but the large debt owing to the United States (swollen to more than double the original principal of the subsidy loan through unpaid arrearages of interest) had to be arranged and settled. Moreover, the settlement had to be in accordance with a rigid law of Congress. It required a special order of talent to deal with such a complex state of affairs. The plan meets the situation exactly, and it is difficult to see how the same happy results could have been attained in any other way.

1412 [5—Extract from the Commercial and Financial Chronicle, March 4, 1899, volume 68, page 427.]

Central Pacific R. R.—Southern Pacific Co.—Deposits without penalty limited to March 23—Majority of stock assents.—Speyer & Co. give notice that the time for further deposits of bonds and stock under the Central Pacific R. R. Co. readjustment has been limited to March 23, after which date deposits will be accepted, if at all, only

upon such terms and conditions as the bankers may impose. A majority of the stock has already been deposited.

At a meeting of the American holders of certificates of the Central Trust Co. issued in exchange for stock, held on Tuesday, a resolution was unanimously adopted authorizing the New York stockholders' committee, consisting of August Belmont, John G. Carlisle, and George Coppel, to conclude an agreement and accept the plan of readjustment. A similar resolution was adopted by the foreign stockholders several days ago in London. Holders of Central Trust Company certificates are notified to exchange them on or before March 23 for certificates of deposit issued under the plan of readjustment.

1413 Cash payment must be made by April 6.—The cash payment of \$2 per share on shares of Central Pacific stock deposited has been called, and must be made on or before April 6, 1899, at the office of Messrs. Speyer & Co., 30 Broad Street, New York, or at the offices of their agents in Europe.

1414 [6—Extract from the Commercial and Financial Chronicle, March 11, 1899, volume 68, page 472.]

Central Pacific R. R.—Listed.—Of the company's \$67,275,500 of capital stock, 393,918 shares have been deposited under the plan of readjustment, and Speyer & Co. engraved certificates of deposit issued therefor have been listed on the New York Stock Exchange. (V. 68, p. 427.)

1415 [7—Extract from the Commercial and Financial Chronicle, March 18, 1899, volume 68, page 523.]

Central Pacific R. R.—Four notes paid.—According to the terms of the recent settlement, four of the notes given to the Government were paid at the Treasury Department March 10. The notes amounted to \$11,762,543. (See v. 68, p. 378; v. 68, p. 472.)

1416 [8—Extract from the Commercial and Financial Chronicle, April 1, 1899, volume 68, page 617.]

Central Pacific R. R.—Southern Pacific Co.—Plan operative—Further deposits to be received till April 6.—A large majority of each class of bonds and over 97½ per cent of the stock of the Central Pacific having assented to the plan and agreement for the readjustment of the company, dated Feb. 8, 1899, the readjustment managers give notice that the said plan is declared operative. The time for

further deposits of stock and bonds, without additional charge, has been extended to and including April 6, 1899, after which date deposits will be accepted only upon a cash payment of one per cent of the par value of bonds, and an additional cash payment of \$1 per share of stock deposited.

As to the Central Pacific first-mortgage bonds, series A, B, C, D, E, F, G, H, and I, holders of certificates of deposit issued under bondholders' agreement, dated Aug. 14, 1897, are notified that in order to accelerate the carrying out of the plan holders should present their certificates promptly at the offices of the readjustment managers to be stamped as assenting to the plan of readjustment. Any holder desiring to accept cash for his bond rather than the new securities as provided in the plan must present his certificate of deposit to be stamped accordingly on or before April 6, 1899. See advertisement in another column. (V. 68, p. 523.)

Listed.—The New York Stock Exchange has listed the engraved certificates issued by Speyer & Co. for the following securities:

\$2,196,000 Western Pacific R. R. first-mortgage bonds, series A and B; \$9,152,000 California & Oregon R. R. first-mortgage bonds, series A and B; \$5,156,000 Central Pacific R. R., San Joaquin Valley Branch, first-mortgage bonds; and \$1,703,000 Central Pacific Ry. land bonds. The amount of bonds on the list is to be reduced accordingly, and the committee on stock list is empowered to add to the list additional certificates as officially notified that they have been issued in accordance with the plan.

1418 [9—Extract from the Commercial and Financial Chronicle, April 15, 1899, volume 68, pages 721 and 722.]

Central Pacific R. R.—Securities mostly assented—Penalty.—Speyer & Co. announce that over 91 per cent of the bonds and 99 per cent of the stock have been deposited under the plan of readjustment, dated February 8. Further deposits will be accepted upon a cash payment of 1 per cent of the par value of bonds and an additional cash payment of \$1 per share of stock deposited until April 29, after which date no deposits will be accepted except in their discretion and upon such terms and additional payments as may be imposed. (V. 68, p. 617.)

1419 [10—Extract from the Commercial and Financial Chronicle, Investors' Supplement for April, 1899, volume 68, page 24.]

Central Pacific R. R.—(See map of Southern Pacific.)

Road:

Lines owned—

	Miles.
San Francisco, Cal., to near Ogden, Utah.....	872
Lathrop, Cal., to Goshen, Cal.....	140
Roseville Junction, Cal., to Oregon State line.....	296
Branches to San Jose, etc.....	35

Trackage—

Northern Ry., main line.....	6
Union Pacific into Ogden.....	5

Total ..... 1,360

Readjustment plan.—The plan issued by Speyer & Co. and associates in Feb., 1899, and published in v. 68, p. 378, provides for the acquisition of the stock by the Southern Pacific Co. and the guaranteeing by that company of the principal and interest of two new Cent. Pac. loans shown above. The present indebtedness, including the U. S. Government loan (the latter amounting, with interest, on Feb. 1, 1899, to \$59,812,714), will be discharged and the future needs of the property provided for by the following new securities shown in the table above, viz:

(1) Common stock, \$67,275,500, to be sold to syndicate and offered for sale to depositors of present common stock upon payment of \$2 per share deposited.

(2) Preferred stock, 4 per cent cumulative, authorized issue \$20,000,000, to be delivered to Southern Pacific Co. in consideration of issue of equal amount at par value of the Southern Pacific Company's 4 per cent gold bonds; of which to be delivered on completion of readjustment, \$12,000,000; reserved to be delivered only to provide additional funds, if required, for the payment of 3 per cent notes to the United States, and thereafter only for betterments and additions, \$3,000,000; reserved to be delivered for improvements and additions at not exceeding \$200,000 yearly, \$5,000,000.

(3) First refunding M. gold 4s, \$100,000,000, and to be secured by all the railroads, terminals, and equipment now owned, including about 1,349 miles of first track, etc., or by deposit as collateral security of at least 90 per cent of the present outstanding first-mortgage bonds of the Cent. Pac. R. R. Co. of California and the West. Pac. R. R. Co., and at least 75 p. c. of all the now outstanding bonds of the Central Pacific R. R. Co. and merged companies; of which

1421 to be retained by United States as collateral for 3 per cent notes, \$47,056,000; in partial exchange for existing bonds, \$51,253,500; purchased by syndicate to provide cash requirements of plan, \$1,690,500.

(4) Thirty-year gold 3½s, \$25,000,000, to be secured by a second lien upon all the properties covered by the 1st ref. mortgage, and also by deposit with the trustees as acquired of all securities and moneys held in any sinking fund of the Central Pacific R. R., consisting Jan. 1, 1899, of \$12,553,000 in securities and \$86,459 cash, and by a trust deed upon all the lands now covered by the mortgage dated Oct. 1, 1870; of which in partial exchange for existing bonds, \$13,695,000; purchased by syndicate to provide cash requirements of plan, \$11,305,000.

(5) Twenty three per cent notes, aggregating \$58,812,714, issued to the Government in settlement of subsidy debt; \$11,762,543 paid, leaving \$47,056,000 to mature, \$2,940,635 half yearly Aug., 1901, to Feb., 1909. First refunding 4s are deposited to retire the notes as they fall due.

The Southern Pacific Co. will acquire the stock of the Cent. Pacific R. R., issuing its own stock for \$67,275,500 as part consideration, and also \$36,819,000 collateral 50-year gold 4s, secured by a collateral trust mortgage covering all the new Cent. Pac. preferred and common stock acquired. See statement for Southern Pacific Co. In March, 1899, a large majority of each class of bonds and over 97½ per cent of the stock had assented to the plan, which was thereupon declared operative. (V. 68, p. 617.)

Exchange of securities.—The basis of exchange is as follows:

Existing bonds to be deposited.	Each \$1,000 receives—			
	Cash. <sup>1</sup>	Refg. 4s.	New 3½s.	Or all cash.
Cent. Pac. R. R. Co. 1st M. "A".....	\$33. 33	\$1, 000	\$50	<sup>2</sup> \$1, 000
Series B, C, D, E, F, G, H, and I.....	29. 17	1, 000	50	<sup>2</sup> 1, 000
West. Pac. R. R. 1st M., A and B.....	35. 00	1, 000	50	<sup>2</sup> 1, 000
San Joaquin Valley Branch, 1st M.....	50. 00	1, 000	75	<sup>2</sup> 1, 000
Land bonds.....	41. 67	500	700	<sup>2</sup> 1, 000
Fifty-year 6s.....	50. 00	500	900	<sup>2</sup> 1, 050
Fifty-year 5s.....	41. 67	500	800	<sup>2</sup> 1, 050
Cal. & Or. and Cen. Pac. R. R. 1st M...	29. 17	1, 000	200	<sup>2</sup> 1, 090

1243 <sup>1</sup> Interest from the due dates of the last coupons matured prior to Feb. 1, 1899, at the same rates up to the date when the new bonds begin to bear interest, namely, Aug. 1, 1899.

<sup>2</sup> Payable in New York, with accrued interest.

The old common, on payment of \$2 per \$100 share, will receive par in Southern Pacific stock and 25 per cent in So. Pac. coll. trust 4s.

Status of new company.—The fixed charges will aggregate \$4,875,000; on the 4s held by the Government the saving of 1 per cent per

annum until Feb. 1, 1901, or about \$470,000, while the sinking funds will earn about \$695,000, making net charges \$3,710,000. See also Southern Pacific Co.

Land grant.—Total land grant was about 12,000,000 acres, of which about 2,840,000 acres had been sold to December 31, 1894. Sales in 1896, 38,644 acres; cancellations, 17,979 acres; sales, Jan. 1, 1897, to June 30, 1898, 52,582 acres; cancellations, 216,116 acres. Land contracts on hand July 1, 1898—uncompleted payments, \$158,734; principal of deferred payments, \$553,612; and interest do., \$558,224.

Earnings, 8 months, July 1 to Feb. 28—

1898-9—	
Gross .....	\$10,713,024
Net .....	3,940,771
1897-8—	
Gross .....	10,472,069
Net .....	4,004,002

1424 Annual report.—Fiscal year (since 1896) ends June 30.

Abstract of report for year ending June 30, 1898, was given in v. 67, p. 1157, 1163, showing gross \$15,766,349, net \$6,544,679, against gross \$12,639,711 and net \$4,990,812 in 1896-97. For the calendar years—

Gross earnings year ending Dec. 31—

1896 .....	\$12,527,084
1895 .....	13,045,657
1894 .....	13,118,245

—v. 68, p. 329, 378, 427, 472, 523, 617, 721.

1425 [11—Extract from the Commercial and Financial Chronicle, Investors' Supplement for July, 1899, volume 69, page 24.]

Central Pacific R. R.—(See map of Southern Pacific.)

Road:

Lines owned—	Miles.
San Francisco, Cal., to near Ogden, Utah.....	872
Lathrop, Cal., to Coshen, Cal.....	146
Roseville Junction, Cal., to Oregon State line.....	293
Branches to San Jose, etc.....	15
Trackage—	
Northern Ry., main line.....	6
Union Pacific into Ogden.....	5
Total .....	1,330

Readjustment plan.—The plan issued by Speyer & Co. and associates in Feb., 1899, and published in v. 68, p. 378, provides for the acquisition of the stock by the Southern Pacific Co. and the guaranteeing by that company of the principal and interest of two new Cent. Pac. loans shown above. The present indebtedness, including the U. S. Government loan (the latter amounting, with

interest, on Feb. 1, 1899, to \$59,812,714), will be discharged and the future needs of the property provided for by new securities 1426 in the table above, viz:

(1) Common stock, \$67,275,500.

(2) Preferred stock, 4 per cent cumulative, authorized issue \$20,000,000, to be delivered to Southern Pacific Co. in consideration of issue of equal amount at par value of the Southern Pacific Company's 4 per cent gold bonds, of which to be delivered on completion of readjustment, \$12,000,000; reserved to be delivered only to provide additional funds, if required, for the payment of 3 per cent notes to the United States, and thereafter only for betterments and additions, \$3,000,000; reserved to be delivered for improvements and additions at not exceeding \$200,000 yearly, \$5,000,000.

(3) First refunding M. gold 4s, \$100,000,000, and to be secured by all the railroads, terminals, and equipment now owned, including about 1,349 miles of first track, etc., or by deposit as collateral security of at least 90 per cent of the present outstanding first-mortgage bonds of the Cent. Pac. R. R. Co. of California and the West. Pac. R. R. Co., and at least 75 p. c. of all the now outstanding bonds of the Central Pacific R. R. Co. and merged companies, of which to be retained by United States as collateral for 3 per cent notes, \$47,056,000; in partial exchange for existing bonds, 1427 \$51,253,500 purchased by syndicate to provide cash requirements of plan, \$1,690,500.

(4) Thirty-year gold  $3\frac{1}{2}$ s, \$25,000,000, to be secured by a second lien upon all the properties covered by the 1st ref. mortgage and also by deposit with the trustees as acquired of all securities and moneys held in any sinking fund of the Central Pacific R. R., consisting, Jan. 1, 1899, of \$12,553,000 in securities and \$86,459 cash, and by a trust deed upon all the lands now covered by the mortgage dated Oct. 1, 1870, of which in partial exchange for existing bonds \$13,695,000; purchased by syndicate to provide cash requirements of plan, \$11,305,000.

(5) Twenty three per cent notes, aggregating \$58,812,714, issued to the Government in settlement of subsidy debt; \$11,762,543 paid, leaving \$47,056,000 to mature, \$2,940,635 half-yearly Aug., 1901, to Feb., 1909. First refunding 4s are deposited to retire them when due.

The Southern Pacific Co. will acquire the stock of the Cent. Pacific R. R., issuing its own stock for \$67,275,500 as part consideration, and also \$36,819,000 collateral 50-year gold 4s, secured by a collateral trust mortgage covering all the new Cent. Pac. preferred and 1428 common stock acquired. See statement for Southern Pacific

Co. In March, 1899, a large majority of each class of bonds and over  $97\frac{1}{2}$  per cent of the stock had assented to the plan, which was thereupon declared operative. (V. 68, p. 617.)



## Terms of exchange.—

Existing bonds to be deposited.	Each \$1,000 receives—			
	Cash. <sup>1</sup>	Refg. 4s.	New 3½s.	Or all cash.
Cent. Pac. R. R. Co. 1st M., "A".....	\$33. 33	\$1, 000	\$50	<sup>2</sup> \$1, 000
Series B, C, D, E, F, G, H, and I.....	29. 17	1, 000	50	<sup>2</sup> 1, 000
West. Pac. R. R. 1st M., A and B.....	35. 00	1, 000	50	<sup>2</sup> 1, 000
San Joaquin Valley Branch 1st M.....	50. 00	1, 000	75	<sup>2</sup> 1, 000
Land bonds.....	41. 67	500	700	<sup>2</sup> 1, 000
Fifty-year 6s.....	50. 00	500	900	<sup>2</sup> 1, 050
Fifty-year 5s.....	41. 67	500	800	<sup>2</sup> 1, 050
Cal. & Or. and Cen. Pac. R. R. 1st M....	29. 17	1, 000	200	<sup>2</sup> 1, 090

<sup>1</sup> Interest from the due dates of the last coupons matured prior to Feb. 1, 1899, at the same rates up to the date when the new bonds begin to bear interest, namely, Aug. 1, 1899.

<sup>2</sup> Payable in New York, with accrued interest.

1429 The old common, on payment of \$2 per \$100 share, will receive par in Southern Pacific stock and 25 per cent in So. Pac. coll. trust 4s.

On June 30, 1899, suit was brought to foreclose series "A" first-mortgage bonds. (V. 69, p. 26.)

Status of new company.—The fixed charges will aggregate \$4,-875,000; on the 4s held by the Government the saving of 1 per cent per annum until Feb. 1, 1901, or about \$470,000, while the sinking funds will earn about \$695,000, making net charges \$3,710,000.

Land grant.—Total land grant was about 12,000,000 acres, of which about 2,840,000 acres had been sold to December 31, 1894. Sales in 1896, 38,644 acres; cancellations, 17,979 acres. Land contracts on hand July 1, 1898—uncompleted payments, \$158,734; principal of deferred payments, \$553,612; and interest do., \$558,224.

Earnings, 11 months, July 1 to May 31—

1898-9—

Gross.....	\$14, 897, 510
Net.....	5, 647, 454

1897-8—

Gross.....	14, 420, 543
Net.....	6, 157, 133

Annual report.—Fiscal year (since 1896) ends June 30. Abstract of report for year ending June 30, 1898, was given in v. 67, 1430 p. 1157, 1163, showing gross \$15,766,349, net \$6,544,679, against gross \$12,639,711 and net \$4,990,812 in 1896-97. For the calendar years—

Gross earnings year ending Dec. 31—

1896.....	\$12, 527, 084
1895.....	13, 045, 657
1894.....	13, 118, 245

—v. 68, p. 329, 378, 427, 472, 523, 617, 721; v. 69, p. 26.

1431 [12—Extract from the Commercial and Financial Chronicle, August 5, 1899, volume 69, page 282.]

**Central Pacific Railway—Successor company.**—This company has been incorporated in Utah, with a capital stock of \$87,275,500 (of which \$20,000,000 preferred), as successor of the old Central Pacific Railroad under the plan of reorganization. (V. 69, p. 26.)

1432 [13—Extract from the Commercial and Financial Chronicle, September 23, 1899, volume 69, page 645.]

**Central Pacific R. R.—Reorganization notice.**—Of the total capital stock of \$67,275,500, \$66,960,300 has been deposited under the plan of readjustment dated February 8, 1899. Holders who have not yet deposited their stock may do so prior to Oct. 4, on payment of \$5 per share penalty in addition to the assessment of \$2 per share. See advertisement on another page. (V. 69, p. 282.)

1433 [14—Extract from the Commercial and Financial Chronicle, Investors' Supplement for October, 1899, volume 69, page 22.]

**Central Pacific Ry.—(See map of Southern Pacific.)**

Lines owned:	Miles.
San Francisco, Cal., to near Ogden, Utah.....	871
Lathrop, Cal., to Goshen, Cal.....	146
Roseville Junction, Cal., to Oregon State line.....	296
Branches to San Jose, etc.....	35
<b>Trackage:</b>	
Northern Ry., main line.....	6
Union Pacific into Ogden.....	5
<b>Total</b> .....	<b>1,359</b>

**Organization.**—Incorporated in Utah in July, 1899, as successor of the railroad under the plan of readjustment in v. 68, p. 378, by which plan the Southern Pacific acquired the entire capital stock and guaranteed the principal and interest of the two new Central Pacific bond issues shown above. The old indebtedness, including the U. S. Government loan, excepting about \$1,600,000 bonds, largely soon to mature, has been discharged. The new securities are:

(1) Common stock, \$67,275,500, all held by So. Pac. Co.

1434 (2) Preferred stock, 4 per cent cumulative, authorized issue \$20,000,000, delivered to Southern Pacific Co. in consideration of issue of equal amount at par value of the Southern Pacific Company's 4 per cent gold bonds; of which delivered on completion of readjustment, \$12,000,000; reserved to be delivered only to provide additional funds if required for the payment of 3 per cent notes to the United States, and thereafter only for betterments and additions \$3,000,000; reserved to be delivered for improvements and additions at not exceeding \$200,000 yearly, \$5,000,000.

(3) First refunding M. gold 4s, \$100,000,000, and secured by all the railroads, terminals, and equipment now owned, including about 1,349 miles of first track, etc., or by deposit as collateral security of at least 90 per cent of the present outstanding first mortgage bonds of the Cent. Pac. R. R. Co. of California and the West. Pac. R. R. Co., and at least 75 p. c. of all the now outstanding bonds of the Central Pacific R. R. Co. and merged companies; of which retained by United States as collateral for 3 p. c. notes, \$47,056,000 issued; in partial exchange for existing bonds, \$51,253,500 purchased by syndicate to provide cash requirements of plan, \$1,690,500. See Abstract, v. 69, p. 808.

1435 (4) Thirty-year gold 3 1/2s, \$25,000,000, secured by a second lien upon all the properties covered by the 1st ref. mortgage, and also by deposit with the trustees as acquired of all securities and moneys held in any sinking fund of the Central Pacific R. R., consisting Jan. 1, 1899, of \$12,553,000 in securities and \$86,459 cash, and by a trust deed upon all the lands now covered by the mortgage dated Oct. 1, 1870; of which in partial exchange for existing bonds, \$13,695,000; purchased by syndicate to provide cash requirements of plan, \$11,305,000. See Mortgage Abstract, v. 69, p. 858; also see p. 851.

(5) Twenty three per cent notes, aggregating \$58,812,714, issued to the Government in settlement of subsidy debt; \$11,762,543 paid, leaving \$47,056,000 to mature, \$2,940,635 half-yearly Aug., 1901, to Feb., 1909. First refunding 4s are deposited to retire them when due.

The Southern Pacific Co. has acquired the stock of the Cent. Pacific R. R., issuing its own stock for \$67,275,500 as part consideration, and also \$36,819,000 collateral 50-year gold 4s, secured by a collateral trust mortgage covering all the new Cent. Pac. preferred and common stock acquired. See statement for Southern Pacific Co.

1436 Terms of exchange.—

Existing bonds to be deposited.	Each \$1,000 receives—			
	Cash. <sup>1</sup>	Refg. 4s.	New 3 1/2s.	Or all cash.
Cent. Pac. R. R. Co. 1st M. "A".....	\$33. 33	\$1, 000	\$50	<sup>2</sup> \$1, 000
Series B, C, D, E, F, G, H, and I.....	29. 17	1, 000	50	<sup>2</sup> 1, 000
West. Pac. R. R. 1st M., A and B.....	35. 00	1, 000	50	<sup>2</sup> 1, 000
San Joaquin Valley Branch 1st M.....	50. 00	1, 000	75	<sup>2</sup> 1, 000
Land bonds.....	41. 67	500	700	<sup>2</sup> 1, 000
Fifty-year 6s.....	50. 00	500	900	<sup>2</sup> 1, 050
Fifty-year 5s.....	41. 67	500	800	<sup>2</sup> 1, 050
Cal. & Or. and Cen. Pac. R. R. 1st M.....	29. 17	1, 000	200	<sup>2</sup> 1, 090

<sup>1</sup> Interest from the due dates of the last coupons matured prior to Feb. 1, 1899, at the same rates up to the date when the new bonds begin to bear interest, namely Aug. 1, 1899.

<sup>2</sup> Payable in New York, with accrued interest.

The old common, on payment of \$2 per \$100 share, will receive par in Southern Pacific stock and 25 per cent in So. Pac. coll. trust 4s.

Status of new company.—The fixed charges will aggregate 1437 \$4,875,000; on the 4s held by the Government the saving of 1 per cent per annum until Feb. 1, 1901, or about \$470,000, while the sinking funds will earn about \$695,000, making net charges \$3,710,000.

Land grant.—Total land grant was about 12,000,000 acres, of which about 2,840,000 acres had been sold to December 31, 1894. Sales in 1896, 38,644 acres; cancellations, 17,979 acres. Land contracts on hand July 1, 1898—uncompleted payments, \$158,734; principal of deferred payments, \$553,612; and interest do., \$558,224.

Earnings, 2 months, July 1 to Aug. 31—

1899—	
Gross .....	\$3,490,610
Net .....	1,628,476
1898—	
Gross .....	2,756,142
Net .....	1,140,057

Annual report.—Fiscal year (since 1896) ends June 30. In 1898–99 gross, \$16,401,028; net, \$6,362,381. Abstract of report for year ending June 30, 1898, was given in v. 67, p. 1157, 1163, showing gross \$15,766,349, net \$6,544,679. For the calendar years—

Gross earnings year ending Dec. 31—

1896 .....	\$12,527,084
1895 .....	13,045,657
1894 .....	13,118,245

—v. 68, p. 523, 617, 721; v. 69, p. 26, 282, 645, 646, 794, 851.

1438 DEFENDANTS' EXHIBIT No. 96, APRIL 24, 1915.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

*To the judges of the United States Circuit Court, Southern District of California:*

The United States of America, by direction of the Attorney General thereof, represented by George J. Denis, United States attorney, and Joseph H. Call, special attorney, bring this, their petition in equity, against the Southern Pacific Company, a corporation organized and existing under and by virtue of the laws of the State of Kentucky; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and of the United States; the Southern Pacific Railroad

Company, a corporation organized and existing under and by virtue of the laws of the Territory of Arizona; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of New Mexico; the Galveston, Harrisburg and San Antonio Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Texas; the Texas and New Orleans Railroad Company of 1874, a corporation organized and existing under and by virtue of the laws of the State of Texas; the Louisiana Western Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana; Morgan's Louisiana and Texas Railroad and Steamship Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana; the Mexican International Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Connecticut; the Southern Pacific Railroad Company, a corporation pretending to be organized in the year 1888 under and by virtue of the laws of the State of California; the San Jose and Almeden Railroad Company, a corporation; the Pajara and Santa Cruz Railroad Company, a corporation; the Monterey Railroad Company, a corporation; the Monterey Extension Railroad Company, a corporation; the Southern Pacific Branch Railway Company, a corporation; the San Pablo and Tulare Railroad Company, a corporation; the San Pablo and Tulare Extension Railroad Company, a corporation; the San Ramon Valley Railroad Company, a corporation; the Stockton and Copperopolis Railroad Company, a corporation; 1440 the Stockton and Tulare Railroad Company, a corporation; the San Joaquin Valley and Yosemite Railroad Company, a corporation; the Los Angeles and San Diego Railroad Company, a corporation; the Los Angeles and Independence Railroad Company, a corporation; the Long Beach, Whittier and Los Angeles County Railroad Company, a corporation; the Long Beach Railroad Company, a corporation; the Southern Pacific Railroad Extension Company, a corporation; the Ramona and San Bernardino Railroad Company, a corporation, each organized under and by virtue of the laws of the State of California; the Texas and Pacific Railway Company, a corporation; the Central Pacific Railroad Company, a corporation organized under the laws of the State of California and of the United States; the California and Oregon Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and of the United States; the Oregon Central Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon and of the United States; the Pacific Mail Steamship Company, a corporation; the Pacific Improvement Company, a corporation organized and existing under and

by virtue of the laws of the State of California; the Central  
 1441 Trust Company of New York, a corporation organized and  
 existing under and by virtue of the laws of the State of New  
 York; the Pacific Mail Steamship Company, a corporation; Collis P.  
 Huntington, a citizen and resident of the State of California; Charles  
 F. Crocker, a resident and citizen of the State of California; Edwin  
 F. Sealres, a citizen and resident of the State of Massachusetts; Mrs.  
 Leland Stanford, a citizen and resident of the State of California;  
 Mrs. Leland Stanford, as executrix of the last will and testament of  
 Leland Stanford, deceased, a citizen and resident of the State of  
 California; Stillman, a citizen and resident of ;  
 Hubbard, a citizen and resident of ; A. N. Towne, a citizen and  
 resident of the State of California; J. A. Fillmore, a citizen and resi-  
 dent of the State of California; D. O. Mills, Lloyd Tevis, and Geritt  
 L. Lansing, trustees, each a resident of and citizen of the State of  
 California; T. H. Goodman, a citizen and resident of the State of  
 California; John A. Muir, a citizen of the State of California, resid-  
 ing within the southern district of California; and D. Burkhalter, a  
 citizen of the State of California, residing within the southern dis-  
 trict of California.

1442 And thereupon your orators allege and show unto the court:

That each of the railroad companies and transportation  
 companies above named now are, and at all the times hereinafter  
 named have been, engaged in carrying passengers, property, and  
 commerce between and among the States of the United States and  
 between and among the States and Territories of the United States,  
 and between and among the United States and foreign countries.

And your orators further allege that the railroad and transporta-  
 tion companies above named severally own and operate lines of  
 standard-guage railroad, which are all connected with each other,  
 which when taken together, form a continuous line from Portland,  
 Oregon, by way of San Francisco and Los Angeles, in the State of  
 California, Yuma, in the Territory of Arizona, and El Paso, in the  
 State of Texas, to New Orleans, in the State of Louisiana, with con-  
 necting lines from Ogden, Utah, to San Francisco, California, from  
 El Paso, Texas, to Santa Rosalia, Mexico, from Houston, Texas, to  
 Galveston, Texas, from Houston, Texas, to Albany, Texas, and to  
 the cities of Denison and Paris, and from Los Angeles, Cali-  
 1443 fornia, to San Pedro, Santa Monica, and Ellwood, California,  
 and from San Francisco to Calistoga, Santa Rosa, Rumsey,  
 Oroville, Placerville, Ione City, Valley Springs, Milton, Monterey,  
 Santa Cruz, and to various other points and places.

And your orators further allege that said line of railroad from  
 San Francisco, by way of Los Angeles, to Fort Yuma, upon the  
 Colorado River, was constructed by the United States through the

agency of the Southern Pacific Railroad Company, by virtue of the acts of Congress of July 27, 1866 (14 Stats., 292), and of March 3, 1871 (16 Stats., 573), for the purpose of securing the safe and speedy transportation of the mails, troops, munitions of war, and public stores of the United States over said line of railroad.

And your orators further allege that said line of railroad from Ogden, Utah, to San Francisco, California, was likewise constructed by the United States, through the agency of the Central Pacific Railroad Company, for like uses and purposes of the United States.

Your orators further allege that the line of railroad from the line between Oregon and California to San Francisco, California, was likewise constructed by the United States, through the agency  
1444 of the California and Oregon Railroad Company, for like uses and purposes of the United States.

And your orators further allege that that part of the line of railroad constructed between the line between California and Oregon and Portland, Oregon, was constructed by the United States, through the agency of the Oregon Central Railroad Company, for like uses and purposes of the United States.

And your orators further allege that the defendants herein have combined and conspired together, and with other persons and corporations, whose names are unknown to your orators; but, when ascertained, will be inserted as defendants herein, to restrain trade and commerce between and among the several States of the United States, and between and among the States and Territories of the United States, and between and among the United States and foreign nations.

And your orators further allege that, in furtherance of such combination and conspiracy as aforesaid, the defendants have attempted to monopolize and have monopolized all the trade and commerce between San Francisco and other cities and places upon the Bay of San Francisco, in said State, by railroad, and other points and places  
within the United States outside of the State of California, and  
1445 have attempted to monopolize, and have monopolized, a large part of the trade and commerce between and among the several States of the United States, and between and among the States and Territories of the United States, and between and among the United States and foreign nations, particularly that part of such trade and commerce by land and by sea between cities and towns in California, Nevada, Oregon, Arizona, New Mexico, and Texas, respectively, and other States and Territories of the United States.

And your orators further allege that, in furtherance of said combination and conspiracy, and in fraud of the rights of the United States and of the public, the defendants herein have combined all of said lines of railroad and transportation under a single management,

forming a monopoly of the trade and commerce thereof, by land and by sea between the points and places named as aforesaid.

And your orators further allege that, in furtherance of such combination and conspiracy, and in fraud of the rights of the United States and of the public, and without any authority so to do, said Southern Pacific Company of Kentucky and the Southern Pacific

Railroad Company of California, defendants, did, on the 10th 1446 day of February, 1885, enter into a certain contract or agreement, a copy of which is hereto annexed and made a part hereof and marked "Exhibit A," by which said Southern Pacific Railroad Company pretended to lease to said Southern Pacific Company, for the term of ninety-nine years, all of its railroad situated in the State of California, with all its branches, and all railroads leased to said Southern Pacific Railroad Company, together with all rolling stock, telegraph lines, tools, and property of every kind and nature.

And your orators further allege that, in furtherance of such combination and conspiracy, and in fraud of the rights of the United States and of the public, and without any authority so to do, said Southern Pacific Company of Kentucky and the Central Pacific Railroad Company, defendants, did, on the 17th day of February, 1885, enter into a certain contract or agreement, a copy of which is hereto annexed, made a part hereof, and marked "Exhibit B," by which said Central Pacific Railroad Company pretended to lease to said Southern Pacific Company for the term of ninety-nine years all of its railroad situated in the Territory of Utah and States of Nevada and California, known and designated as the Central Pacific

Railroad, together with all the branches thereof, and together 1447 with all the rolling stock, telegraph lines, steamboats, wharves, piers, depots, workshops, and all other property, real and personal, owned, held, and possessed by said Central Pacific Railroad Company.

And your orators further allege that, in furtherance of said combination and conspiracy, and in fraud of the rights of the United States and of the public, and without any authority so to do, said Southern Pacific Railroad Company of California and the San Jose and Almaden Railroad Company, the Pajara and Santa Cruz Railroad Company, the Monterey Railroad Company, the Monterey Extension Railroad Company, the San Pablo and Tulare Railroad Company, the San Pablo Extension Railroad Company, the Southern Pacific Branch Railway Company, the San Ramon Valley Railroad Company, the Stockton and Copperopolis Railroad Company, the Stockton and Tulare Railroad Company, the San Joaquin Valley and Yosemite Railroad Company, the Los Angeles and San Diego Railroad Company, the Los Angeles and Independence Railroad Company, the Long Beach, Whittier and Los Angeles County Rail-



road Company, the Long Beach Railroad Company, the Southern Pacific Railroad Extension Company, and the Ramona and San Bernardino Railroad Company, on the 4th day of May, 1888, entered into a certain contract or agreement, a copy of which is hereto annexed, made a part hereof, and marked "Exhibit C," by which all of said railroad corporations agreed and pretended to amalgamate and consolidate their debts, properties, assets, and franchises, forming a new corporation, by the name and style of the Southern Pacific Railroad Company.

And your orators further allege that, in furtherance of said combination and conspiracy, and in fraud of the rights of the United States and of the public, and without any authority so to do, said Southern Pacific Railroad Company of California, incorporated in the year 1888 as aforesaid, did make, execute, and deliver to the defendant the Central Trust Company of New York a certain mortgage or deed of trust to secure the payment of thirty-eight millions (\$38,000,000.00) of dollars of bonds proposed to be issued to said Central Trust Company as trustee, which said pretended mortgage or deed of trust has been recorded in all of the counties of the State of California through which said railroads and branches thereof pass, a copy of which said pretended mortgage or deed of trust is hereto annexed, made a part hereof, and marked "Exhibit D."

And your orators further allege that sometimes defendants herein pretend to have transferred a majority and controlling interest of the stock of said Southern Pacific Railroad Company, Southern Pacific Company of Kentucky, and other railroads mentioned as aforesaid to the Pacific Improvement Company, a defendant herein, in order to more effectually and conveniently carry out such combination and conspiracy in restraint of such trade and commerce and to create such monopoly thereof, but your orators allege that all such transfers of stock from one company to another is utterly void and of no effect.

And your orators further allege that sometimes defendants, in order to accomplish such combination and conspiracy in restraint of trade and commerce, pretend to have elected as boards of directors of said several railroad corporations and transportation companies above named the same persons appointed the board of directors of each such company, and such other persons as will carry out such combination and conspiracy without regard to the rights of the United States and of the public, and without regard to the rights of any of the stockholders of said companies; but your orators allege that all such acts and doings are illegal and void, and in fraud of the rights of the United States and of the public.

Your orators hereby expressly reserve the right to question the corporate existence of any or all of said various rail-

road companies and transportation companies above named, in view of the unlawful acts of said companies and the violation and abuse of the charter powers of said companies.

To the end, therefore, that said defendants may, if they can, show why your orators should not be granted the relief herein sought, and that the matters herein alleged may be determined, and the rights of your orators enforced, your orators bring this suit and require each of the above-named corporations defendant herein to show, upon oath, to the best of their respective knowledge and information:

First. The original or copy of so much of the stock books or book of stockholders or other record of said respective companies showing the names and residences of the owners and holders of the shares of capital stock of said respective companies, and the number of shares and amount now held by each such owner or holder.

1451 Second. The originals or copies of all contracts, leases, and agreements, of every kind and nature, between each of said companies and any other defendant herein, and between each of said companies and any other person or corporation relating to the operation or control or leasing or pooling of earnings of each such company or line of railroad of such company or any portion thereof.

And your orators further pray that said contract or lease between the Southern Pacific Company and the Southern Pacific Railroad Company, dated February 10, 1885, may be annulled and decreed to be void.

That the said agreement between the Southern Pacific Company of Kentucky and the Central Pacific Railroad Company, dated February 17, 1885, may be annulled and decreed to be void.

That the said pretended articles of amalgamation and consolidation between the Southern Pacific Railroad Company and seventeen other railroad corporations, dated May 4, 1888, may be annulled and decreed to be void.

That the said pretended mortgage or deed of trust of the

1452 Southern Pacific Railroad Company to the Central Trust Company of New York may be annulled and decreed to be void.

And your orators further pray that all contracts, leases, agreements, and consolidations by and between the defendants and between each defendant railroad and transportation company and any other defendant railroad and transportation company, and between each defendant railroad and transportation company and any other railroad or transportation company, in anywise relating to the leasing, operation, or control of any thereof, may be annulled and decreed to be void.

And your orators further pray that all transfers of the shares of the capital stock of any of the corporations defendant herein to any other corporation defendant herein be annulled and decreed to be void.

And your orators further pray that by a proper decree of this court each of the railroad and transportation companies defendant herein be required henceforth, through its own corporate officers and employees, to maintain and operate, without favor or discrimination against any person, company, or corporation, or the United States, its said respective railroad or transportation line for railroad, 1453 governmental, commercial, and other public purposes, and exercise, by itself alone, all of its respective duties required by its charter and by the laws of the United States and of the State of California.

And your orators further pray that the defendants herein and each of them, their servants, agents, and employees, be perpetually enjoined from in any way combining or conspiring together or with any other person or corporation to restrain trade or commerce between the States or with foreign nations.

And your orators allege and show unto the court that all of the defendants herein are necessary parties to this suit, and they pray that the court may order all of such defendants, whether they reside within this judicial district or not, may be summoned, and that subpoenas may be issued to that end.

And may it please your honors to grant unto your orators all such other and further relief as the nature of the case may require and as may seem to your honors to be equitable, and for costs of this suit.

May it please your honors to grant unto your orators a writ of subpoena issuing out of and under the seal of this honorable 1454 court, directed to the Southern Pacific Company, a corporation organized and existing under and by virtue of the laws of the State of Kentucky; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and of the United States; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of Arizona; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of New Mexico; the Galveston, Harrisburg and San Antonio Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Texas; the Texas and New Orleans Railroad Company of 1874, a corporation organized and existing under and by virtue of the laws of the State of Texas; the Louisiana Western Railroad Company, a corporation organized and existing under and by vir-

tue of the laws of the State of Louisiana; Morgan's Louisiana and Texas Railroad and Steamship Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana; the Mexican International Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Connecticut; the Southern Pacific Railroad Company, a corporation pretending to be organized in the year 1888 under and by virtue of the laws of the State of California; the San Jose and Almaden Railroad Company, a corporation, the Pajara and Santa Cruz Railroad Company, a corporation, the Monterey Railroad Company, a corporation, the Monterey Extension Railroad Company, a corporation, the Southern Pacific Branch Railway Company, a corporation, the San Pablo and Tulare Railroad Company, a corporation, the San Pablo and Tulare Extension Railroad Company, a corporation, the San Ramon Valley Railroad Company, a corporation, the Stockton and Copperopolis Railroad Company, a corporation, the Stockton and Tulare Railroad Company, a corporation, the San Joaquin Valley and Yosemite Railroad Company, a corporation, the Los Angeles and San Diego Railroad Company, a corporation, the Los Angeles and Independence Railroad Company, a corporation, the Long Beach, Whittier and Los Angeles County Railroad Company, a corporation, the Long Beach Railroad Company, a corporation, the Southern Pacific Railroad Extension Company, a corporation, the Ramona and San Bernardino Railroad Company, a corporation, each organized under and by virtue of the laws of the State of California; the Texas and Pacific Railway Company, a corporation; the Central Pacific Railroad Company, a corporation organized under the laws of the State of California and of the United States; the California and Oregon Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and the United States; the Oregon Central Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon and of the United States; the Pacific Mail Steamship Company, a corporation; the Pacific Improvement Company, a corporation organized and existing under and by virtue of the laws of the State of California; the Central Trust Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York; Collis P. Huntington, a citizen of and resident of the State of California; Charles F. Crocker, a resident and citizen of the State of California; Edwin F. Searles, a citizen and resident of the State of Massachusetts; Mrs. Leland Stanford, a citizen and resident of the State of California; Mrs. Leland Stanford as executrix of the last will and testament of Leland Stanford, deceased, a citizen and resident of the State of California; Thomas E. Stillman, a citizen and resi-

dent of State of New York; Thomas H. Hubbard, a citizen  
 1457 and resident of State of New York; A. N. Towne, a citizen  
 and resident of the State of California; J. A. Fillmore, a citizen and resident of the State of California; D. O. Mills, Lloyd Tevis, and Geritt L. Lansing, trustees, each a resident and citizen of the State of California; T. H. Goodman, a citizen and resident of the State of California; John A. Muir, a citizen of the State of California, residing within the southern district of California; and D. Burkhalter, a citizen of the State of California, residing within the southern district of California, commanding them, and every of them, on a certain day and under a certain penalty therein to be inserted, personally to be and to appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to and perform and abide such further order and decree therein as to your honors shall seem meet.

Your orators expressly waive answer under oath of the above defendants, except as to the two interrogatories hereinbefore mentioned required to be answered by the corporations defendant herein, as to which two interrogatories answer is required upon oath.

RICHARD OLNEY,

*Attorney General United States.*

1458

GEORGE J. DENIS,

*United States Attorney So. Dist. of California.*

JOSEPH H. CALL,

*Special U. S. Atty.*

Upon reading the foregoing petition in equity of the United States, and duly considering the same, and it appearing to the court that all of the defendants named in said petition are necessary parties to said suit, it is ordered by the court that subpœnas, issued under the seal of this court, be issued, directed to each of said defendants, which shall be served wherever said defendants may be found within the jurisdiction of the United States.

July 16th, 1894.

E. M. Ross,

*Judge of the District Court and one of the Judges of the United States Circuit Court for the Southern District of California.*

\* \* \* \* \*

1459 (Pursuant to stipulation at page 2556 of the testimony, the following matter appearing at this point need not be copied as a part of defendants' Exhibit No. 96:)

Lease dated February 10, 1885, of the Central Pacific Railroad Company and others to the Southern Pacific Company.

Lease dated February 17, 1885, of the Central Pacific Railroad Company to the Southern Pacific Company.

Articles of association, incorporation, amalgamation, and consolidation of the Southern Pacific Railroad Company, dated May 4, 1888.

Indenture dated August 25, 1888, between the Southern Pacific Railroad Company, the Southern Pacific Company, and the Central Trust Company of New York.

\* \* \* \* \*

1460 At a stated term, to wit, the January term, A. D. 1894, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the court room in the city of Los Angeles, on Saturday, the fourth day of August, in the year of our Lord one thousand eight hundred and ninety-four.

Present: The Honorable Erskine M. Ross, district judge.

United States, complainant, vs. Southern Pacific Company et al.,  
defendants. No. 609.

In open court, this 4th day of August, 1894, it having been made to appear to the court that the Attorney General of the United States has directed the dismissal of the above-entitled suit without prejudice, and Mr. George J. Denis, United States attorney, and Mr. Joseph H. Call, special assistant United States attorney, having presented such matter to the court, and, in pursuance of such direction of the  
1461 Attorney General, moved for such dismissal, it is therefore ordered by the court that the petition in equity in the above-entitled suit be, and the same is hereby, dismissed without prejudice.

In the Circuit Court of the United States, Ninth Judicial Circuit,  
Southern District of California. No. 609.

The United States of America, complainants, vs. The Southern Pacific Company, a corporation organized and existing under and by virtue of the laws of the State of Kentucky; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California  
1462 and of the United States; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of Arizona; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of New Mexico; the Galveston, Harrisburg and San Antonio Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Texas; the Texas and New Orleans Railroad Company of 1874, a corporation organized and existing under and by

- virtue of the laws of the State of Texas; the Louisiana Western Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana; Morgan's Louisiana and Texas Railroad and Steamship Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana; the Mexican International Railroad
- 1463 Company, a corporation organized and existing under and by virtue of the laws of the State of Connecticut; the Southern Pacific Railroad Company, a corporation pretending to be organized in the year 1888 under and by virtue of the laws of the State of California; the San Jose and Almaden Railroad Company, a corporation; the Pajara and Santa Cruz Railroad Company, a corporation; the Monterey Railroad Company, a corporation; the Monterey Extension Railroad Company, a corporation; the Southern Pacific Branch Railway Company, a corporation; the San Pablo and Tulare Railroad Company, a corporation; the San Pablo and Tulare Extension Railroad Company, a corporation; the San Ramon Valley Railroad Company, a corporation; the Stockton and Copperopolis Railroad Company, a corporation; the Stockton and Tulare Railroad Company, a corporation; the San Joaquin Valley and Yosemite Railroad Company, a corporation; the Los Angeles and San Diego Railroad Company, a
- 1464 corporation; the Los Angeles and Independence Railroad Company, a corporation; the Long Beach, Whittier and Los Angeles County Railroad Company, a corporation; the Long Beach Railroad Company, a corporation; the Southern Pacific Railroad Extension Company, a corporation; the Ramona and San Bernardino Railroad Company, a corporation; each organized under and by virtue of the laws of the State of California; the Texas and Pacific Railway Company, a corporation; the Central Pacific Railroad Company, a corporation organized under the laws of the State of California and of the United States; the California and Oregon Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and of the United States; the Oregon Central Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon and of the United States; the Pacific Mail Steamship Company, a corporation; the Pacific Im-
- 1465 provement Company, a corporation organized and existing under and by virtue of the laws of the State of California; the Central Trust Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York; Collis P. Huntington, a citizen and resident of the State of California; Charles F. Crocker, a resident and citizen of the State

of California; Edwin F. Searles, a citizen and resident of the State of Massachusetts; Mrs. Leland Stanford, a citizen and resident of the State of California; Mrs. Leland Stanford as executrix of the last will and testament of Leland Stanford, deceased, a citizen and resident of the State of California; Thomas E. Stillman, a citizen and resident of State of New York; Thomas H. Hubbard, a citizen and resident of State of New York; A. N. Towne, a citizen and resident of the State of California; J. A. Fillmore, a citizen and resident of the State of California; D. O. Mills, 1466 Lloyd Tevis, and Gerrit L. Lansing, trustees, each a resident of and citizen of the State of California; T. H. Goodman, a citizen and resident of the State of California; John A. Muir, a citizen of the State of California, residing within the southern district of California; and D. Burkhalter, a citizen of the State of California, residing within the southern district of California, defendants.

The complainants filed their petition in equity herein on the 16th day of July, 1894, which is hereto annexed.

On the 16th day of July, 1894, the court made and entered an order herein that subpœnas issued under the seal of this court be issued directed to each of said defendants, which shall be served wherever said defendants may be found within the jurisdiction of the United States, which order annexed to said petition in equity is hereto annexed.

A subpœna to appear and answer in said cause directed to 1467 all of the defendants was thereafter, on the 17th day of July, 1894, issued returnable on the 3rd day of September, A. D. 1894.

Six alias subpœnas to appear and answer in said cause, each directed to all of the defendants, were thereafter, on the 19th day of July, 1894, issued, returnable on the 3rd day of September.

On the 4th day of August, 1894, the court made and entered herein an order that complainants' petition in equity be dismissed without prejudice, and on said 4th day of August, 1894, a final decree of dismissal without prejudice was accordingly signed, filed, entered, and recorded herein and is hereto annexed.

1468 United States of America. Circuit Court of the United States. Ninth Judicial Circuit, Southern District of California. No. 609.

The United States of America, complainants, vs. The Southern Pacific Company, a corporation organized and existing under and by virtue of the laws of the State of Kentucky, the Southern Pacific



Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and 1469 of the United States; The Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of Arizona; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of New Mexico; the Galveston, Harrisburg and San Antonio Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Texas; the Texas and New Orleans Railroad Company, of 1874, a corporation organized and existing under and by virtue of the laws of the State of Texas; the Louisiana Western Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana; Morgan's Louisiana and Texas Railroad and Steamship Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana; the Mexican International 1470 Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Connecticut; the Southern Pacific Railroad Company, a corporation pretending to be organized, in the year 1888, under and by virtue of the laws of the State of California; the San Jose and Almaden Railroad Company, a corporation; the Pajara and Santa Cruz Railroad Company, a corporation; the Monterey Railroad Company, a corporation; the Monterey Extension Railroad Company, a corporation; the Southern Pacific Branch Railway Company, a corporation; the San Pablo and Tulare Railroad Company, a corporation; the San Pablo and Tulare Extension Railroad Company, a corporation; the San Ramon Valley Railroad Company, a corporation; the Stockton and Copperopolis Railroad Company, a corporation; the Stockton and Tulare Railroad Company, a corporation; the San Joaquin Valley and Yosemite Railroad Company, a corporation; the Los Angeles and San Diego Railroad Company, a corporation; 1471 tion; the Los Angeles and Independence Railroad Company, a corporation; the Long Beach, Whittier and Los Angeles County Railroad Company, a corporation; the Long Beach Railroad Company, a corporation; the Southern Pacific Railroad Extension Company, a corporation; the Ramona and San Bernardino Railroad Company, a corporation; each organized under and by virtue of the laws of the State of California; the Texas and Pacific Railway Company, a corporation; the Central Pacific Railroad Company, a corporation, organized under the laws of the State of California and of the United States; the California and Oregon

Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and of the United States; the Oregon Central Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon and of the United States; the Pacific Mail  
1472 Steamship Company, a corporation; the Pacific Improvement Company, a corporation organized and existing under and by virtue of the laws of the State of California; the Central Trust Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York; Collis P. Huntington, a citizen and resident of the State of California; Charles F. Crocker, a resident and citizen of the State of California; Edwin F. Searles, a citizen and resident of the State of Massachusetts; Mrs. Leland Stanford, a citizen and resident of the State of California; Mrs. Leland Stanford as executrix of the last will and testament of Leland Stanford, deceased, a citizen and resident of the State of California; Thomas E. Stillman, a citizen and resident of State of New York; Thomas H. Hubbard, a citizen and resident of State of New York; A. N. Towne, a citizen and resident of the State of California; J. A. Fillmore, a citizen and resident of the State of California; D. O. Mills, Lloyd Tevis, and  
1473 Gerrit L. Lansing, trustees, each a resident of and citizen of the State of California; T. H. Goodman, a citizen and resident of the State of California; John A. Muir, a citizen of the State of California, residing within the southern district of California; and D. Burkhalter, a citizen of the State of California, residing within the southern district of California, defendants.

In Equity.

Decree.

In open court this 4th day of August, 1894, being a day in the January term, A. D. 1894, of said Circuit Court of the United States for the Southern District of California, it having been made to appear to the court that the Attorney General of the United States has directed the dismissal of the above-entitled suit without prejudice, and George J. Denis, Esq., United States attorney, and Joseph H. Call, Esq., special assistant United States attorney, having presented such matter to the court, and in pursuance of such  
1474 direction of the Attorney General, moved for such dismissal, and the court having thereupon ordered that said motion be granted:

It is therefore ordered, adjudged, and decreed that the petition in equity of the said complainants, the United States of America, be, and the same hereby is, dismissed without prejudice.

Los Angeles, August 4th, 1894.

Ross,  
*District Judge.*

Decree entered and recorded August 4th, 1894.

WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Company (a corporation) et al. Decree. Filed Aug. 4, 1894. Wm. M. Van Dyke, clerk.

1475 Whereupon said petition in equity, order that subpoenas issue, and final decree are hereto annexed; said final decree being duly signed, filed, and entered herein, pursuant to the practice of said circuit court.

Attest, etc.:

[SEAL.]

WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 609. In the Circuit Court of the United States, Ninth Judicial Circuit, for the Southern District of California. The United States of America vs. The Southern Pacific Company (a corporation) et al. Enrolled papers. Filed August 4th, 1894. Wm. M. Van Dyke, clerk. By ———, deputy clerk. Recorded. Decree. Register Book No. 1, page 548.

1476 United States of America. Circuit Court of the United States, Ninth Circuit, Southern District of California.

The United States of America vs. The Southern Pacific Company, a corporation, et al. Clerk's office. No. 609. Praecipe.

*To the clerk of said court:*

SIR: Please issue for service in the above-entitled cause one original subpoena and seventy certified copies thereof.

Los Angeles, July 17, 1894.

JOSEPH H. CALL,  
*Spl. Asst. U. S. Atty.*

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Company, a corporation, et al. Praecipe for subpoena and certified copies. Filed July 17, 1894. Wm. M. Van Dyke, clerk.

1477 United States of America. Circuit Court of the United States,  
Ninth Circuit, Southern District of California.

The United States of America vs. The Southern Pacific Company, a  
corporation, et al. Clerk's Office. No. 609. Praeceptum.

*To the clerk of said court:*

SIR: Please issue 6 alias subpoenas for service on defendants residing in other districts than the Southern District of California, and 10 certified copies of each of said alias subpoenas—in all 60 certified copies.

Los Angeles, July 19th, 1894.

JOSEPH H. CALL,  
*Spl. Asst. U. S. Atty.*

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Company, a corporation, et al. Praeceptum for 6 alias subpoenas and 10 certified copies of each. Filed July 19, 1894. Wm. M. Van Dyke, clerk.

1478 United States of America. Circuit Court of the United States,  
Ninth Circuit, Southern District of California.

The United States of America vs. The Southern Pacific Company,  
a corporation, et al. Clerk's office. No. 609. Praeceptum.

*To the clerk of said court:*

SIR: Please issue for service in the above-entitled cause thirty-seven (37) certified copies of alias subpoenas issued in said cause.

Los Angeles, July 20th, 1894.

JOSEPH H. CALL,  
*Spl. Asst. U. S. Attorney.*  
Per G. J. D., *U. S. Atty.*

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Company, a corporation, et al. Praeceptum for thirty-seven (37) certified copies of alias subpoenas. Filed July 20, 1894. Wm. M. Van Dyke, clerk.

1479 United States of America. Circuit Court of the United States, Ninth Circuit, Southern District of California.

United States v. Southern Pacific Company et al. Clerk's office.  
No. 609. Praeceptum.

*To the clerk of said court:*

SIR: Please issue copy of bill in equity filed in above cause and oblige.

JOHN D. BICKNELL.

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, Southern District of California. United States v. Southern Pacific Company et al. Praeceptum for copy of bill. Filed Jul. 20, 1894. Wm. M. Van Dyke, clerk.

1480 United States of America. Circuit Court of the United States, Ninth Circuit, Southern District of California.

The United States of America, vs. The Southern Pacific Company, a corporation, et al. Clerk's office. No. 609. Praeceptum.

*To the clerk of said court:*

SIR: Please issue a certified copy of the petition in equity filed in the above-entitled cause.

Los Angeles, July 21st, 1894.

GEORGE J. DENIS,  
*U. S. Attorney.*

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Company, a corporation, et al. Praeceptum for certified copy of petition in equity. Filed Jul. 21, 1894. Wm. M. Van Dyke, clerk.

1481 I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify the foregoing to be a full, true, and correct copy of all pleadings and papers filed and of all orders made and entered in the cause entitled The United States of America, complainants, vs. The Southern Pacific Company, a corporation, et al., defendants, No. 609, as the same remain on file and of record in my office.

Attest my hand and the seal of said Circuit Court this 25th day of April, A. D. 1908.

[SEAL.]

WM. M. VAN DYKE, *Clerk,*  
By CHAS. N. WILLIAMS, *Deputy.*

1482

DEFENDANTS' EXHIBIT No. 97, MAY 29, 1915.

This lease, made this first day of March, A. D. 1912, by and between Central Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, party of the first part and lessor, and Southern Pacific Company, a corporation duly organized and existing under laws of the State of Kentucky, party of the second part and lessee—

Witnesseth:

That whereas heretofore, on the 17th day of February, 1885, Central Pacific Railroad Company and Southern Pacific Company entered into an agreement of lease, covering the whole of the railroad, equipment, and property then owned by said Central Pacific Railroad Company and situated in the Territory of Utah and States of Nevada and California; and

Whereas said agreement and lease was subsequently changed and modified by four certain written agreements entered into between said Central Pacific Railroad Company and Southern Pacific Company, and dated, respectively, January 1, 1888, December 7, 1483 1893, March 22, 1894, and April 15, 1897, all of which said five agreements are hereby referred to and made a part hereof as fully as if they were herein set forth in full; and

Whereas subsequent to said amendment and agreement of April 15, 1897, Central Pacific Railroad Company sold, assigned, and transferred unto Central Pacific Railway Company, said lessor, all of the railroad, rights, properties, and franchises which were the subject of said five agreements with said Southern Pacific Company; and

Whereas said lessor, as the successor in interest of said Central Pacific Railroad Company, has recognized said five agreements and has continued to receive the benefits arising therefrom to it as the successor in interest of said Central Pacific Railroad Company and all benefits which would have been realized therefrom by said Central Pacific Railroad Company but for said sale to said lessor; and

Whereas the consideration moving and to move from said Southern Pacific Company for the exercise of the rights enjoyed by it under said five agreements made by it with Central Pacific Railroad Company is deemed by this lessor to be ample and adequate for the execution of this agreement and lease and for the rights to be 1484 enjoyed by said Southern Pacific Company under this agreement; and

Whereas before the acquisition of said property of said Central Pacific Railroad Company by said lessor Central Pacific Railroad Company acquired certain property not specifically mentioned and described in said five agreements, but which has been treated by the

parties hereto as falling under and leased by the effect of said five agreements; and

Whereas since the acquisition of said property of said Central Pacific Railroad Company by the said lessor said lessor has acquired certain property connected with and necessary in the conduct of the line of railroad acquired by it from said Central Pacific Railroad Company, which said after-acquired property has also been treated as falling under the terms and effect of said five agreements by said Central Pacific Railroad Company; and

Whereas, in addition to the after-acquired property of said lessor next hereinbefore mentioned, said lessor has acquired by deeds dated February 29, 1912, certain properties from Central California Railway Company, Oregon Eastern Railway Company, Nevada & California Railway Company, Chico & Northern Railroad Company,

Fernley & Lassen Railway Company, Goose Lake & Southern 1485 Railway Company, Modoc Northern Railway Company, and Sacramento Southern Railroad Company:

Now, therefore, it is hereby agreed by and between the said lessor and the said lessee that the following properties now owned by said lessor shall be, and are hereby, subjected to the terms, conditions, and provisions of the lease herein by said Southern Pacific Company of the properties formerly owned by Central Pacific Railroad Company, as said lease is evidenced by said five agreements between said Central Pacific Railroad Company and said Southern Pacific Company, and for no other or further consideration, and for the unexpired portion of the term of said lease of said Southern Pacific Company of said properties of said Central Pacific Railroad Company, as evidenced by said five agreements.

The property so hereby leased consists of—

1st. All railroad properties, together with their branches, depots, station houses, equipments, appurtenances, appendages, and adjuncts of every kind and nature acquired by said Central Pacific Railroad Company subsequent to the date of said agreement of April 15, 1897.

2nd. All railroads, together with their branches, depots, station houses, equipments, appurtenances, appendages, and adjuncts 1486 of every kind and nature acquired by said Central Pacific Railway Company prior to February 29, 1912.

3rd. The following railroad properties acquired by said Central Pacific Railway Company on February 29, 1912:

All that certain line of railroad formerly belonging to the Central California Railway Company, and extending from a connection with the line of railroad of the Central Pacific Railway Company at Niles, in the county of Alameda, in a general southwesterly direction through Newark, in the county aforesaid, and across San Francisco Bay to a connection with the railroad of the Southern Pacific Rail-

road Company at Redwood City, in the county of San Mateo, all in the State of California, being about 16.316 miles in length, together with all of the rights, powers, immunities, privileges, franchises, and other property appertaining thereto.

Also those certain lines of railroad, together with all of the rights, powers, immunities, privileges, franchises, and other property appertaining thereto, formerly the property of Nevada & California Railway Company, a California corporation, and by it conveyed to Central Pacific Railway Company, a Utah corporation, by deed dated February 29, 1912, which said lines of railroad are described as follows:

1487 (a) A line of railroad extending from a connection with the railroad of the Central Pacific Railway Company at or near Hazen, Churchill County, Nevada, in a general southeasterly direction via Churchill and Tonopah Junction, Nevada, and Owenyo, California, to Keeler, Inyo County, California, through Churchill, Lyon, and Mineral Counties, Nevada, and Mono and Inyo Counties, California, about 288.64 miles.

(b) A line of railroad extending from a connection with line (a), above described, at or near Hazen in a general southeasterly direction to Fallon, all in Churchill County, Nevada, about 15.92 miles.

(c) A line of railroad extending from a connection with line (a), above described, at or near Churchill in a general southwesterly direction to Mound House, all in Lyon County, Nevada, about 26.21 miles.

(d) A line of railroad extending from a connection with line (a), above described, at or near Filben in a general southeasterly direction to Candelaria, all in Mineral County, Nevada, about 5.51 miles.

(e) A line of railroad extending from a connection with line 1488 (a), above described, at or near Owenyo, Inyo County, in a general southerly direction, through San Bernardino County, to a connection with the railroad of the Southern Pacific Railroad Company at or near Mojave, Kern County, all in the State of California, about 142.68 miles.

Also all those certain lines of railroad, together with all of the rights, powers, immunities, privileges, franchises, and other property appertaining thereto, which were conveyed to Central Pacific Railway Company by Oregon Eastern Railway Company, an Oregon corporation, by deed dated February 29, 1912, and which said lines of railroad so hereby leased are described as follows:

The constructed line of railroad acquired by the Oregon Eastern Railway Company from the California Northeastern Railway Company extending from a connection with the line of railroad of the Central Pacific Railway Company at or near Weed Station, in Siskiyou County, California, in a general northeasterly direction to



Klamath Falls, Klamath County, Oregon; and also the line of railroad projected and partly constructed by the Oregon Eastern Railway Company extending from a connection with the aforesaid line of railroad of the Oregon Eastern Railway Company at said Klamath Falls in a general northerly direction to Odell, in said 1489 Klamath County, Oregon, and thence in a general northwesterly direction to a connection with the line of railroad of the Oregon & California Railroad Company at or near Natron, Lane County, Oregon.

4th. All railroads, property, branches, depots, station houses, equipments, appurtenances, appendages, and adjuncts, of every kind and nature, now owned and hereafter acquired or constructed by said Central Pacific Railway Company as or in connection with main lines, extensions, or branches, including the extension of said former Oregon Eastern Railway Company's line, and the lines projected by Fernley & Lassen Railway Company, Goose Lake & Southern Railway Company, and Modoc Northern Railway Company.

Nothing in this agreement contained shall be construed to cover the property acquired by the said lessor from Chico & Northern Railroad Company by deed dated February 29, 1912, nor the property acquired by said lessor from Sacramento Southern Railroad Company by deed dated February 29, 1912, nor any extensions or branches of said Chico & Northern Railroad Company or said Sacramento Southern Railroad Company, so long as the properties formerly owned by said two last-mentioned companies are under 1490 lease to corporations other than said lessee.

It is hereby further expressly understood and agreed that this lease shall and will be subordinated in all its terms and conditions to any future mortgage, deed of trust, or instrument evidencing or establishing a lien for indebtedness made or executed by the lessor upon any or all of the properties hereby leased; and in the event of such mortgage, deed of trust, or lien being foreclosed, in whole or in part, this lease shall have no priority with respect to the rights acquired under such instrument creating or evidencing such lien, or under such foreclosure.

It is further agreed that the automatic extension of this lease to railroad properties hereafter constructed, including said lines and extensions projected by said Oregon Eastern Railway Company, Modoc Northern Railway Company, Goose Lake & Southern Railway Company, and Fernley & Lassen Railway Company, shall be effective only upon the completion of such after-constructed extensions, lines, or branches, ready for operation, and as and at the time each new construction, including the ones above mentioned, is ready for operation.

1491 It is hereby further agreed that the lease now subsisting between Nevada & California Railway Company and Southern Pacific Company, dated July 1, 1909, be, and the same is hereby, cancelled.

In witness whereof each of the parties hereto has caused these presents to be signed by its president or a vice president and its corporate seal to be hereunto affixed, attested by its secretary or assistant secretary, all as of the day and year first above written.

[Official seal.]

CENTRAL PACIFIC RAILWAY COMPANY,  
By Wm. F. HERRIN, *President*.

Attest:

G. I. KING, *Secretary*.

[Official seal.]

SOUTHERN PACIFIC COMPANY,  
By W. SPROULE, *President*.

Attest:

W. F. INGRAM, *Assistant Secretary*.

1492 STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

On this sixteenth day of March, in the year one thousand nine hundred and twelve, before me, E. B. Ryan, a notary public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared W. Sproule and W. F. Ingram, known to me to be the president and assistant secretary, respectively, of the Southern Pacific Company, the corporation described in and that executed the within instrument, and also known to me to be the persons who executed said instrument on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the city and county of San Francisco, the day and year in this certificate first above written.

[Notarial seal.]

E. B. RYAN,  
*Notary Public in and for the City and County of  
San Francisco, State of California.*

My commission expires Feb. 25th, 1914.

1493 STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

On this sixteenth day of March, in the year one thousand nine hundred and twelve, before me, E. B. Ryan, a notary public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared Wm. F. Herrin and G. L. King, known to me to be the president and secretary, respectively, of the Central

Pacific Railway Company, the corporation described in and that executed the within instrument, and also known to me to be the persons who executed said instrument on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, the day and year in this certificate first above written.

[Notarial seal.]

E. B. RYAN,

*Notary Public in and for the city and county of  
San Francisco, State of California.*

My commission expires Feb. 25th, 1914.

1494 Consent of stockholders of Central Pacific Railway Company to lease of corporate property to Southern Pacific Company.

Whereas the board of directors of Central Pacific Railway Company have this day leased, demised, and let unto Southern Pacific Company, a corporation, lines of railroad of said Central Pacific Railway Company described in and on the terms stated by a written lease thereof, authorized and approved by the directors of said Central Pacific Railway Company on this day, as more fully appears in and by the proceedings of said directors, evidenced by the minutes of their meeting this day held:

Now, therefore, the undersigned stockholders, holding of record more than two-thirds of the issued capital stock of Central Pacific Railway Company, do hereby expressly ratify and confirm all and every action of said board of directors in respect to said lease, the leasing of said property, and the authorization therefor, and do hereby consent to the execution and delivery of said lease.

Dated at San Francisco, California, this 16th day of March, 1912.

1495

*Names of stockholders and no. of shares.*

Common stock:

Wm. F. Herrin.....	1
E. E. Calvin.....	2
G. L. King.....	1
William Hood.....	3
C. H. Redington.....	2
W. R. Scott.....	1
E. O. McCormick.....	1
Southern Pacific Company (by Wm. F. Herrin, vice president; W. F. Ingram, assistant secretary).....	672, 742

Preferred stock:

Southern Pacific Company (by Wm. F. Herrin, vice president; W. F. Ingram, assistant secretary).....	174, 000
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1496 STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

On this 16th day of March, in the year one thousand nine hundred and twelve, before me, E. B. Ryan, a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared Wm. F. Herrin and E. E. Calvin, G. L. King and William Hood, C. H. Redington, W. R. Scott, and E. O. McCormick, known to me to be the persons described in, whose names are subscribed to, and who executed the annexed instrument, and they acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in the said city and county of San Francisco, the day and year last above written.

[Notarial seal.]

E. B. RYAN,

*Notary Public in and for the city and county of  
San Francisco, State of California.*

My commission expires Feby. 25th, 1914.

1497 STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

On this sixteenth day of March, in the year one thousand nine hundred and twelve, before me, E. B. Ryan, a notary public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared Wm. F. Herrin and W. F. Ingram, known to me to be the vice president and assistant secretary, respectively, of the Southern Pacific Company, the corporation described in and that executed the within instrument, and also known to me to be the persons who executed said instrument on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the city and county of San Francisco, the day and year in this certificate first above written.

[Notarial seal.]

E. B. RYAN,

*Notary Public in and for the City and County of  
San Francisco, State of California.*

My commission expires Feb. 25th, 1914.

Southern Pacific Company to Union Trust Company of New York,  
trustee.

Four per cent mortgage (Central Pacific stock collateral). Dated  
August 1st, 1899.

NEW YORK, *May 21, 1915.*

I, John V. B. Thayer, vice president of the Union Trust Company of New York, do hereby certify that this is a true copy of the original mortgage, dated August 1st, 1899, of the Southern Pacific Company to Union Trust Company of New York, trustee, to secure an issue of bonds known as Southern Pacific Company four per cent gold bonds (Central Pacific stock collateral).

JOHN V. B. THAYER.

1500     [\$14,409.25 internal-revenue stamps affixed and cancelled.]

This indenture, made the first day of August, A. D. 1899, by and between the Southern Pacific Company, a corporation created, organized, and existing under and by virtue of the laws of the State of Kentucky, party of the first part, and the Union Trust Company of New York, a corporation created, organized, and existing under and by virtue of the laws of the State of New York, party of the second part.

Witnesseth:

Whereas the party of the first part, in pursuance of its corporate powers, has acquired, and now holds, the preferred and common stock hereinafter described of the Central Pacific Railway Company, a corporation created, organized, and existing under the laws of the State of Utah; and

Whereas the party of the first part is about to issue (to the amounts and within the limits hereinafter prescribed on that behalf) its four per cent gold bonds, to be designated as four per cent gold bonds—Central Pacific stock collateral—in the general forms following, that is to say:

[Form of coupon bond.]

\$1,000 (or \$500).

United States of America. Southern Pacific Company. Four per  
per cent gold bond, Central Pacific stock collateral.

Know all men by these presents that the Southern Pacific Company, for value received, promises to pay to the bearer or, if regis-

tered, to the registered holder, of this bond, on the first day of August, nineteen hundred and forty-nine, at the office or agency of the Southern Pacific Company, in the city of New York, one thousand (or five hundred) dollars, gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon at the rate of four per cent per annum from August 1, 1899, payable semi-annually at the said office or agency, in like gold coin, on the first day of June and the first day of December in each year, but only upon presentation and surrender, as they severally mature, of the 1502 coupons therefor annexed hereto.

The right is reserved to the Southern Pacific Company and its successors, at its or their option, to redeem this bond at par and accrued interest thereon, upon giving previous notice of its or their intention so to do by publication as prescribed in the mortgage or deed of trust hereinafter mentioned, and the interest upon this bond shall cease at the time for which the same shall have been so called for redemption, as provided in said mortgage or deed of trust.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Southern Pacific Company may be required to pay, or to retain therefrom, under any present or future law of the United States or of any State or county or municipality therein.

This bond is one of a series of four per cent gold bonds—Central Pacific stock collateral—(coupon and registered) of the Southern Pacific Company, issued and to be issued for an aggregate principal sum not exceeding thirty-six million eight hundred and nineteen thousand dollars at any one time outstanding, under and in pursuance of, and all equally secured by, a mortgage or deed of trust dated April 1st, 1899, executed by the Southern Pacific Com- 1503 pany to the Union Trust Company of New York, as trustee, covering the preferred and common stock of the Central Pacific Railway Company, pledged or to be pledged by said mortgage or deed of trust, to which reference is hereby made for a statement of the stock so mortgaged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond shall pass by delivery unless registered in the owner's name on the books of the Southern Pacific Company at its office or agency in the city of New York, such registry being noted on the bond by the bond registrar of the Southern Pacific Company. After such registration no transfer shall be valid unless made on the company's books by the registered owner and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, and thereafter transferability by delivery shall be

restored; but this bond may again, from time to time, be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery merely.

1504 The holder may also, at his option, surrender for cancellation this bond with the coupons for future interest thereon in exchange for a registered bond without coupons, as provided in said mortgage or deed of trust.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the trustee under said mortgage or deed of trust.

In witness whereof the Southern Pacific Company has caused these presents to be signed by its president or one of its vice presidents, and its corporate seal to be hereunto affixed, and to be attested by its secretary or an assistant secretary, and coupons for said interest, with the engraved signature of its treasurer to be attached hereto, this first day of August, 1899.

(The mortgage or deed of trust securing this bond has been duly stamped according to law.)

[L. s.]

SOUTHERN PACIFIC COMPANY,  
By \_\_\_\_\_,  
Vice President.

Attest:

By \_\_\_\_\_,  
Assistant Secretary.

1505

[Form of interest coupon.]

No. \_\_\_\_.

\$20 (or \$10).

On the first day of \_\_\_\_\_ the Southern Pacific Company will pay to bearer, at its office or agency in the city of New York, twenty (or ten) dollars, United States gold coin of the present standard of weight and fineness, without deduction for taxes, being six months' interest then due on its four per cent gold bond—Central Pacific stock collateral—No. \_\_\_\_.

\_\_\_\_\_,  
Treasurer.

1506

[Form of registered bond.]

No.

\$ .

United States of America. Southern Pacific Company four per cent gold bond, Central Pacific stock collateral.

Know all men by these presents that the Southern Pacific Company for value received promises to pay to \_\_\_\_\_ or registered assigns the sum of \_\_\_\_\_ dollars, gold coin of the United States of the

present standard of weight and fineness, on the first day of August, nineteen hundred and forty-nine, at the office or agency of the Southern Pacific Company in the city of New York, and to pay interest thereon at the rate of four per cent per annum from the first day of June or December next preceding the date hereof, payable semiannually at the said office or agency, in like gold coin, on the first day of June and the first day of December in each 1507 year, until the payment of said principal sum.

The right is reserved to the Southern Pacific Company and its successors, at its or their option, to redeem this bond at par and accrued interest thereon, upon giving previous notice of its or their intention so to do by publication as prescribed in the mortgage or deed of trust hereinafter mentioned, and the interest upon this bond shall cease at the time for which the same shall have been so called for redemption, as provided in said mortgage or deed of trust.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Southern Pacific Company may be required to pay or to retain therefrom under any present or future law of the United States or of any State or county or municipality therein.

This bond is one of a series of four per cent gold bonds—Central Pacific stock collateral—(coupon and registered) of the Southern Pacific Company, issued and to be issued for an aggregate principal sum not exceeding thirty-six million eight hundred and nineteen thousand dollars at any one time outstanding, under and in pursuance of, and all equally secured by, a mortgage or deed of 1508 trust dated August 1st, 1899, executed by the Southern Pacific

Company to the Union Trust Company of New York, as trustee, covering the preferred and common stock of the Central Pacific Railway Company pledged or to be pledged by said mortgage or deed of trust, to which reference is hereby made for a statement of the stock so mortgaged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond is transferable by the registered holder thereof in person or by attorney duly authorized on the books of the Southern Pacific Company at its office or agency in the city of New York upon surrender and cancellation of this bond; and thereupon a new registered bond will be issued to the transferee in exchange herefor, as provided in said mortgage or deed of trust, and on payment, if the Southern Pacific Company shall so require, of the charge therein provided for.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate hereon endorsed of the trustee under said mortgage or deed of trust.



1509 In witness whereof the Southern Pacific Company has caused these presents to be signed by its president or one of its vice presidents and its corporate seal to be hereunto affixed and to be attested by its secretary or an assistant secretary this day of .

(The mortgage or deed of trust securing this bond has been duly stamped according to law.)

[L. S.]

SOUTHERN PACIFIC COMPANY,

By

*Vice President.*

Attest:

*Assistant Secretary.*

[Form of trustee's certificate.]

This bond is one of a series of bonds described in the within-mentioned mortgage or deed of trust executed by the Southern Pacific Company to the undersigned.

UNION TRUST COMPANY OF NEW YORK,

*Trustee,*

By

*Vice President.*

1510 Whereas the said bonds of the party of the first part so to be issued as aforesaid are to be secured by the pledge and deposit with the trustee hereunder of the said preferred and common stock of the Central Pacific Railway Company and of such preferred and common stock of the last-mentioned company as may be hereafter deposited hereunder with the said trustee; and

Whereas at a meeting of the board of directors of the party of the first part, duly called, and held on the nineteenth day of September, 1899, the following resolutions were adopted, that is to say:

Resolved, That for the corporate purposes of the company this company issue its bonds, to be known as "Four per cent gold bonds—Central Pacific stock collateral"—to an amount which shall not in any event exceed in the aggregate the principal sum of \$36,819,000 at any one time outstanding. Such bonds shall bear date August 1, 1899, in the case of coupon bonds and of the time of their issue in the case of registered bonds, shall become and be payable on the first day of August, 1949, in gold coin of the United States of the present standard of weight and fineness, and shall bear interest

1511 at a rate not exceeding four per centum per annum, payable semiannually, in like gold coin, on the first day of June and the first day of December in each year, but shall be subject to the

right on behalf of the company and its successors, at its and their option, to redeem the same at par and accrued interest thereon upon giving previous notice of its or their intention so to do by publication as prescribed in the mortgage or deed of trust hereinafter mentioned. Said bonds shall be issued either as coupon or registered bonds. The coupon bonds shall be for the principal sum of one thousand dollars or five hundred dollars each, and shall give to the holders the right to register the principal thereof, and also the right to convert the same into fully registered bonds. The registered bonds without coupons shall be each for the principal sum of one thousand dollars, or such multiples thereof as the company by resolution of its board of directors may from time to time prescribe, and may be issued originally either as registered bonds or in exchange for coupon bonds for an equivalent sum. Such bonds, whether coupon bonds or registered bonds, shall be issued, as shall be determined by the action of the board of directors or the executive committee of the company, at such times and to such amounts as the purposes for which they are  
1512 to be issued may require. When issued such bonds shall be signed by the president or any vice president of the company, and the corporate seal shall be thereunto affixed and attested by the secretary or any assistant secretary. In case the officers who shall have signed and sealed any such bonds shall cease to be officers of the company before the bonds so signed and sealed shall have been actually issued, certified, and delivered, such bonds may, nevertheless, be adopted and used by the company, and may be issued, certified, and delivered as though the persons who signed and sealed such bonds had not ceased to be officers of the company. There shall be attached to the coupon bonds coupons for the interest to grow due thereon, authenticated by the engraved signature of the treasurer or of any future treasurer of the company; and the company may adopt and use for that purpose the engraved signature of any person who shall have been such treasurer, notwithstanding the fact that such person may have ceased to be such treasurer when such bonds shall have been actually issued, certified, and delivered.

Resolved further, That in order to secure the payment of said bonds issued and to be issued, with interest thereon, this com-  
1513 pany execute a mortgage or deed of trust to the Union Trust Company of New York, a corporation of the State of New York, as trustee, covering the preferred and common stock of the Central Pacific Railway Company described in the printed form of mortgage now submitted to this board.

Resolved further, That the said printed form of mortgage now submitted to the board and the forms of bonds embodied therein be, and the same are hereby, approved, and that the president or any vice president and the secretary or any assistant secretary be, and

they are hereby, authorized to execute and deliver the same on behalf of the company under its corporate seal.

Now, therefore the said parties hereto, in consideration of the premises and of one dollar to each by the other in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, do each covenant, promise, and agree, for themselves and their respective successors and assigns, in manner and form following; that is to say:

First. The said party of the first part has simultaneously with the execution hereof pledged and deposited with the said party of  
1514 the second part certificates duly issued to and in the name of the party of the first part or its nominees, and assigned by it or them in blank, with irrevocable power to transfer the same, representing preferred and common stock of the Central Pacific Railway Company to the following amounts, respectively; that is to say:

1. Preferred stock to the amount at its face value of twelve million dollars (\$12,000,000).

2. Common stock to the amount, at its face value, of sixty-seven million two hundred and seventy-four thousand two hundred dollars (\$67,274,200).

The said certificates so pledged and deposited with the party of the second part are to be held by the said party of the second part and its successors in this trust, subject to the reservations, terms, and conditions hereinafter expressed, upon trust for the benefit of the several persons and corporations who shall be or become holders, respectively, of any of the bonds issued or to be issued hereunder by the party of the first part or its successors to secure to such holders equally and without preference of one over another, by reason of priority of time of issue thereof or otherwise, the due and punctual  
1515 payment of the said bonds and the interest thereon as it shall become due, according to the tenor and effect of the said bonds and the interest coupons attached thereto.

Second. The said party of the first part further covenants and agrees that it will, and its successors and assigns shall, in like manner, from time to time, pledge and deposit with the said party of the second part, or its successors in this trust, further certificates issued to and in the name of the party of the first part, or its successors or its or their nominees, and assigned by it or them in blank with irrevocable power to transfer the same, representing preferred stock of the said Central Pacific Railway Company, not exceeding in the aggregate eight million dollars (\$8,000,000), when the same shall have been delivered to the party of the first part, or its successors or assigns, from time to time, in consideration of the issue hereunder by said party of the first part, or its successors, of bonds not exceeding

the like amount, as provided in clauses 2 and 3 of article third of this indenture, such deposits to be made promptly from time to time as soon as practicable after the acquisition of such preferred stock by the party of the first part, or its successors or assigns, the same to be held by the said party of the second part and its successors in this trust for the uses and purposes and upon the trusts and subject to the reservations, terms, and conditions set forth and declared in this indenture.

Third. The party of the second part and its successors in the trust hereby created is and are to authenticate and certify as issued hereunder, and deliver to the party of the first part, its successors or assigns, or upon its or their order, bonds of the party of the first part or its successors, in the forms or substantially the forms above prescribed to the amounts and upon the conditions hereinafter stated, and not otherwise, that is to say:

1. Bonds to the amount, at their face value, of twenty-eight million eight hundred and eighteen thousand five hundred dollars (\$28,818,500), simultaneously with the deposit with the trustee hereunder of the certificates referred to in article first hereof, representing twelve million dollars (\$12,000,000), par value, preferred stock, and sixty-seven million two hundred and seventy-four thousand two hundred dollars (\$67,274,200) par value, common stock, of the said Central Pacific Railway Company.

2. Bonds to the further amount of three million dollars (\$3,000,000), at their face value, to be reserved by the party of the first part, or its successors, (a) to be used to provide additional funds, if required, for the payment from time to time of any of the twenty promissory notes for \$2,940,635.78 each, heretofore delivered to the United States under a settlement agreement between the United States of America, the Central Pacific Railroad Company, and Messrs. Speyer & Co., dated February 1, 1899; or (b) when such notes shall have been paid, to be applied at their market value to provide for payment for, or the reimbursement of, the cost of betterments and additions to the properties of the Central Pacific Railway Company, covered by the mortgages securing its first refunding and three and one-half per cent mortgage bonds, as such cost shall be certified by the president or vice president and chief engineer of the Central Pacific Railway Company.

3. Bonds to the further amount of five million dollars (\$5,000,000), at their face value, to be reserved by the party of the first part, or its successors, to be applied at their market value to provide for payment for, or reimbursement of, the cost of betterments and additions to the said properties of the Central Pacific Railway Company, as such cost shall be certified by the president or vice president

1518 and chief engineer of the said railway company; but the amount of such additional bonds so to be applied under clause 3 hereof shall not at any time exceed at their face value two hundred thousand dollars per annum from the date of this indenture.

When and as any such bonds are issued by said party of the first part, or its successors, under clause 2 or 3 hereof, the like amounts at their par value of preferred stock of the Central Pacific Railway Company are to be received by it or them in consideration therefor, and are to be forthwith deposited with the trustee hereunder, to be held by the said trustee for the uses and purposes and upon the trusts and subject to the reservations, terms, and conditions set forth and declared in this indenture.

The party of the first part hereby covenants and agrees with the party of the second part and with the holders of the bonds intended to be secured by this indenture that the said bonds and their proceeds shall be used and applied only to the objects and purposes above specified.

All the above bonds authenticated in compliance with the provisions of this indenture shall be equally secured hereby with-  
1519 out regard to the time or times when the said bonds shall have been actually issued or otherwise, and without any discrimination or preference of one over another.

Any of the foregoing bonds from time to time, at the option of the party of the first part or its successors, may be executed, authenticated, and certified originally either as coupon bonds or as registered bonds, but the aggregate amount of the bonds issued and outstanding under this indenture shall never at any one time exceed the principal sum of thirty-six million eight hundred and nineteen thousand dollars (\$36,819,000).

Only such bonds as shall bear thereon endorsed a certificate of the trustee hereunder by it duly executed under the hand of its president or a vice president thereof shall be secured by this indenture or shall be entitled to any lien or benefit thereunder, and every such certificate of the said trustee upon any bond executed in behalf of the party of the first part, or its successors, shall be conclusive evidence that the bond so certified has been duly issued hereunder and is entitled to the benefit of the trust hereby created.

Before certifying or delivering any coupon bond hereby secured, the trustee hereunder shall cut off and cancel all coupons  
1520 thereof then matured, and the said Trustee shall not certify or deliver any registered bond bearing interest from any date more than six months prior to such certification or delivery.

Whenever any coupon bond or bonds issued under and secured by this indenture, together with all unmatured coupons thereto belonging, shall be surrendered for exchange for registered bonds, the

party of the first part or its successors shall issue, and the said trustee shall certify and deliver, in exchange for such coupon bond or bonds, a like amount of registered bonds without coupons. Such registered bonds shall be for \$1,000 or for such multiples thereof as, from time to time, the party of the first part or its successors, may prescribe, and shall bear interest at the same rate as the surrendered coupon bonds and from the date of the last matured coupon thereof. In every case of such exchange the said trustee forthwith shall cancel the surrendered bond or bonds and coupons, and shall deliver the same to the party of the first part or its successors.

Whenever any such registered bond shall be surrendered for transfer, the party of the first part or its successors shall issue, and the said trustee shall certify and deliver, to the transferee, upon  
1521 surrender and cancellation of the bond or bonds transferred, a like amount of new registered bonds for \$1,000, or for such multiples of \$1,000 as the party of the first part or its successors, from time to time, may authorize, and bearing interest at the same rate as the surrendered registered bond or bonds, but no registered bond may be converted into a coupon bond.

For any exchange of coupon bonds for registered bonds, and for any transfer of registered bonds without coupons, the party of the first part or its successors, at its or their option, may make a charge not exceeding one dollar for each new registered bond issued upon such exchange or transfer.

Upon surrender by the party of the first part, or its successors, to the trustee for cancellation of any coupon or registered bonds issued hereunder and secured hereby, with a request that bonds be issued hereunder for the like amount at a reduced rate of interest, the trustee shall certify and deliver to the party of the first part or its successors bonds issued hereunder and secured hereby to the amount at their face value of the bonds so surrendered, and carrying interest at such lower rate of interest than four per cent per annum, payable  
1522 semiannually, as the party of the first part or its successors may prescribe in that behalf, and the new bonds so certified and delivered shall be entitled to share in the security of these presents with the like effect as if they had been bonds originally issued under this mortgage.

In case any coupon bond issued hereunder, with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed the party of the first part or its successors, in its or their discretion, may issue, and thereupon the said trustee shall certify and deliver a new bond of like tenor and date, bearing the same distinguishing number, in exchange and substitution for and upon cancellation of the mutilated coupon bond and its coupons or the mutilated registered bond, or in lieu of and substitution for the

coupon bond and its coupons or the registered bond so destroyed, upon receipt of satisfactory evidence of the destruction of such coupon bond and its coupons or of such registered bond and upon receipt also of satisfactory indemnity.

Fourth. The party of the first part and its successors is and are to have the right, at its or their option, to redeem the bonds issued hereunder at par and accrued interest thereon upon giving 1523 previous notice of its or their intention so to do, by publication at least twice a month for three successive months in one newspaper in New York and one newspaper in London, England, the first such publication to be at least six months prior to the date at which such bonds are called for redemption, and the interest upon such bonds shall cease at the time for which the same shall have been so called for redemption, unless the party of the first part or its successors shall thereafter make default in the payment of said bonds at the rate above prescribed upon presentation thereof for the purpose.

Fifth. The party of the first part also covenants with the party of the second part that the party of the first part, its successors or assigns, shall and will punctually pay to the holders of the bonds aforesaid intended to be secured hereby the interest thereon when and as the same shall become due and payable according to the terms and conditions in the said bonds and coupons set forth and contained, and shall and will also, when the principal sums of the said bonds shall according to the provisions thereof become due and payable, fully and entirely pay, satisfy, and discharge the whole of said bonds, both principal and interest.

Sixth. Until default shall be made in the payment of the 1524 principal or interest of the bonds authenticated hereinunder and intended to be secured hereby, or some of them, the party of the second part, and its successors in this trust, shall permit and suffer the party of the first part, its successors and assigns, to retain all the authority, powers, rights, and privileges belonging or incident to the stock hereby pledged or agreed to be pledged or to the ownership thereof not inconsistent with the rights of the party of the second part, or its successors in this trust, as herein expressed.

And it is likewise an express condition of this indenture that until default shall be made in the payment of the principal or interest of the bonds authenticated hereunder and intended to be secured hereby, or some of them, the preferred and common stock of the said Central Pacific Railway Company pledged by the party of the first part, or its successors, with the party of the second part, or its successors, in trust upon the trusts herein declared, shall remain or be registered in the name of the said party of the first part, or its successors or its or their nominees or assigns,

provided the certificates representing such stock assigned in blank, with irrevocable power of transfer executed by the registered  
1525 owners, shall be deposited with the party of the second part, or its successors in this trust, under and subject to the terms and conditions of this trust, the party of the first part, or other registered owners of such deposited stocks being entitled to have the same transferred upon the books of the Central Pacific Railway Company to such persons or parties as may be designated by it or them, provided arrangements satisfactory to the party of the second part, or its successors in this trust, are made for securing the deposit hereunder with the party of the second part, or its successors in this trust, of the new certificates representing such transferred stocks assigned in blank, with irrevocable power of transfer executed by the registered owner or owners; and the person or persons, corporation or corporations, in whose name the said stock shall be registered shall have and enjoy all the rights, powers, and privileges of a stockholder with respect to the said shares of stock, including the voting power thereon, and the right to collect and receive any and all amounts which may from time to time be paid on account of dividends upon either class of the said stock or otherwise in respect thereof, except by way of distribution of capital, and shall be entitled to take any and all proceedings which the party of the  
1526 first part, or its successors or assigns, may deem requisite for the protection of its or their rights and interests under or in respect of the said stock.

Seventh. The party of the first part further covenants that, while the bonds issued hereunder remain outstanding, neither the preferred nor the common stock of the Central Pacific Railway Company shall be increased beyond twenty million dollars (\$20,000,000) par value of preferred stock and sixty-seven million two hundred and seventy-five thousand five hundred dollars (\$67,275,500) par value of common stock, unless arrangements have been made for depositing hereunder (simultaneously with the issue of such increase of such stock) the same proportionate part of such increase of each class of stock as the stock of such class theretofore covered hereby was of the whole outstanding stock of such class as it existed before such increase, and the said Central Pacific Railway Company shall not be merged or consolidated with any other railroad company without the consent of the holders of a majority in amount of the bonds issued hereunder and then outstanding.

Eighth. While any of the bonds issued under this indenture  
1527 are outstanding no new mortgage other than the first refunding mortgage and three and one-half per cent mortgage of the Central Pacific Railway Company dated August 1st, 1899, shall be made of the properties covered by such mortgages (except to refund



the first refunding mortgage bonds and three and one-half per cent mortgage bonds secured thereby or either of such issues), and the party of the first part agrees that, while any of the bonds issued under this indenture are outstanding, it will not, nor shall its successors or assigns, vote the stocks pledged hereunder or permit the same to be voted in favor of any new mortgage except as aforesaid, nor as owner of such deposited stocks will it assent thereto.

Ninth. The existing lease of the properties of the Central Pacific Railway Company to the party of the first part shall terminate in case the pledged stocks above referred to shall be sold under the provisions of this indenture in reference to the sale of such stocks in consequence of default of the party of the first part hereunder; and while any bonds are outstanding hereunder the party of the first part will not as the owner of such pledged stocks vote for or assent to

any other lease of such properties, unless such lease shall have  
1528 been approved by the holders of a majority in amount of the  
bonds outstanding hereunder, or shall contain a provision terminating the same in case such pledged stocks shall be so sold.

Tenth. In case default shall be made in the payment of the principal or interest of any of the bonds authenticated hereunder and intended to be secured hereby, and such default shall continue for six months, or in case of default under the provisions of article eighth hereof, then and in that event, and while such default shall thereafter continue, the party of the second part, or its successors in this trust, shall be entitled to transfer the deposited stock into its own name and to receive (when and as the same shall be paid) all amounts which may from time to time be paid on account of dividends upon the stock pledged hereunder or otherwise in respect thereof, and shall be entitled to exercise the voting power thereon, and otherwise exercise the rights, powers, and privileges of a holder of such stock, and shall be entitled to take any and all proceedings which the party of the second part, or its successors in this trust, may deem requisite for the protection of its or their rights and interests under or in  
respect of the said stock.

1529 Eleventh. In case default shall be made in the payment of  
the principal or interest of the bonds authenticated hereunder and intended to be secured hereby, and such default shall continue for six months, or in case of default under the provisions of article eighth hereof, then and in that event the party of the second part, and its successors in this trust, is and are hereby authorized and empowered, at the request of the holders of one-fourth in amount of the said bonds then outstanding, to resort to any proceedings, legal or equitable, that may be deemed necessary or expedient for the enforcement of the lien hereby created upon all or any part of the preferred or common stock pledged under the provisions of this

trust. All moneys collected under the provisions of this or the preceding article of this indenture shall be applied in the manner provided in the next article of this indenture.

. Twelfth. It shall also be lawful for the said party of the second part and its successors in this trust, in case default shall be made as aforesaid by the party of the first part and continued as aforesaid, upon like request of the holders of one-fourth in amount of the bonds issued and authenticated under the provisions of this indenture then outstanding (such default still continuing), to sell  
1530 at public sale in the city of New York (after advertising notice of the time and place of such sale not less than once a week for six consecutive weeks in one or more daily newspapers published in the said city of New York) all the stocks hereby pledged which shall then be in its or their possession as trustee or trustees under the provisions hereof, or such portions thereof as may be necessary to pay the outstanding bonds of the party of the first part or its successors secured hereby, and all arrears of interest thereon, and all expenses attending as well the execution of this trust as the said sale, and any other costs and charges that may be necessarily incurred in consequence of such sale; such sale to be made in such lots or parcels as the party of the second part, or its successors in trust, may deem most beneficial. The party of the second part, or its successors in trust, may adjourn the sale of the whole or any part of the said stock from time to time in its or their discretion, and may make sale thereof at such adjourned date without further advertisement, and may make all necessary deliveries and transfers to the purchaser or purchasers, discharged from all and every the trusts  
1531 hereby created, and without liability on the part of the purchaser or purchasers to see to the application of the purchase money.

After deducting from the proceeds of such sale or sales the costs and expenses thereof, or which may have been necessarily incurred thereby, and sufficient moneys to indemnify itself or themselves for all advances which may have been made, and against all liabilities which may have been incurred, in the execution of this trust, as well as a reasonable compensation for its or their own services, the said party of the second part, or its successors in the trust, shall apply the residue of the said proceeds, or so much thereof as may be necessary, to or towards the payment and discharge, with pro rata equality, of the principal and interest which shall then be due and unpaid upon all and singular of the said bonds issued by the party of the first part or its successors hereunder, and then remaining outstanding and unpaid, and without preference of interest over principal or principal over interest, and so that no priority or

preference shall be given to any bond which shall have been issued under and be secured by this indenture, and be then due and outstanding over any other bond so issued and secured; and if any surplus of such moneys shall thereafter remain, then the said  
1532 party of the second part, or its successors in trust, shall pay over such balance of the trust funds in its or their hands, and transfer and assign any residue of the trust estate or property unto the said party of the first part, its successors or assigns. Any and every sale of preferred or common stock made pursuant to the foregoing power shall absolutely bar and foreclose all right, interest, and equity of redemption of the party of the first part, or its successors or assigns, in or to the stock so sold; and it is hereby expressly understood and agreed that in the event of any sale of the pledged stock pursuant to the provisions of this article, the party of the second part, or its successors in this trust, may declare the principal of all the bonds issued by the party of the first part, or its successors hereunder, and then unpaid and outstanding, to be due and payable forthwith, and thereupon the same shall become immediately due and payable, anything in the said bonds contained to the contrary thereof notwithstanding. And if it shall occur that after the exhaustion of all the stock hereby pledged as a security for the payment of the said bonds, or which shall be subject to the provisions of this trust, there shall be a deficiency in the payment of  
1533 the principal or interest due on any of the bonds issued and authenticated under this indenture, then the party of the first part and its successors shall remain liable for the payment of such deficiency, and the said party of the second part and its successors in this trust is, and are hereby, authorized to take such further proceedings in law or equity as it or they may be advised to recover the same.

Thirteenth. In case default shall be made in the payment of the principal or interest of any of the bonds authenticated hereunder and intended to be secured hereby, and such default shall continue for six months, then and in that event, upon the written request of the holders of one-fourth in amount of the bonds hereby secured and then outstanding, the party of the second part, by notice in writing delivered to the party of the first part, shall declare the principal of all bonds hereby secured and then outstanding to be due and payable immediately; and upon any such declaration the same shall become and be due and payable immediately, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that at any time after the principal of said bonds shall have been so declared to be due and payable and prior to the sale of the stocks  
1534 pledged hereunder the holders of a majority in amount of the

bonds hereby secured and then outstanding, by written notice to the party of the first part and to the party of the second part, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or impair any right consequent thereon.

Fourteenth. The party of the first part from time to time will pay and discharge all taxes, assessments, and governmental charges lawfully imposed upon the shares of stock at any time pledged hereunder and subject to the lien hereof, or upon any part thereof, or upon the income and profits thereof, the lien of which upon such shares would be prior to the lien hereof, so that the priority of this indenture shall be fully preserved in respect of such shares; provided, however, that nothing contained in this section shall require the party of the first part to pay any such tax, assessment, or charge so long as the party of the first part in good faith shall contest the validity thereof.

Fifteenth. The party of the first part agrees to use its best efforts to maintain and preserve the corporate existence of the Central  
1535 Pacific Railway Company; and for such purposes it may from time to time sell, assign, transfer, and deliver so many shares of the stock of said company as may be necessary to qualify persons to act as directors of, or in any other official relation to, said company.

Sixteenth. In case of dissolution of the party of the first part or the sale of its properties or reorganization of its affairs the deposited stocks may be dealt with and disposed of in such manner as may be agreed upon by the party of the first part, its successors or assigns, and the trustee hereunder, or by the party of the first part, its successors or assigns, and the holders of a majority in amount of the bonds then outstanding hereunder and secured hereby; but all fruits and proceeds of such dealing with or disposition of said deposited stocks shall be held by the Trustee hereunder subject to the terms and conditions hereof; provided, however, that any assessments, contributions, or cash payments made in respect of such deposited stocks by or on behalf of the party of the first part, its successors or assigns, or the trustee hereunder or the holders of such bonds shall constitute a first charge prior to the lien of these presents upon such  
fruits or proceeds, and shall be forthwith repaid therefrom  
1536 or from the sale of such portions thereof as may be requisite to provide for such repayment.

Seventeenth. In case of the resignation, insolvency, neglect, or incapacity to act of the said party of the second part or any successor in this trust the holders of a majority in interest of the bonds issued hereunder then outstanding may select or designate some other trust company or corporation authorized to hold and execute trusts of this nature, and the company or corporation so selected shall be thereupon entitled to receive and hold the pledged stocks belonging to this

trust upon the trusts herein mentioned and declared and shall have all the rights and powers and be subject to all the duties expressed in this indenture. In case of a failure of the bondholders to fill such vacancy in the manner above prescribed the president for the time being of the party of the first part or its successors shall make a temporary appointment for such vacancy, which shall continue until the holders of a majority in interest of said outstanding bonds shall have designated a new trustee to act hereunder. When holders of a majority in interest of the said outstanding bonds shall by an instrument in writing executed by themselves or their attorneys in fact

designate a new trustee under this indenture the estates, 1537 powers, rights, and privileges of any trustee hereunder under any such temporary appointment shall immediately cease and determine and be transferred to and vest in the new trustee so designated, and such temporary trustee shall, upon request of the new trustee, execute and deliver any and all such assignments, transfers, or other instruments in writing as shall be requisite therefor, and thereafter such new trustee shall hold such estates, rights, powers, and privileges with like effect as if it had been designated as the party of the second part hereunder.

Eighteenth. Any and all costs, charges, and expenses incurred in, or in respect of, or in connection with the execution of this trust by or on behalf of the said party of the second part, or its successors in this trust, or for which the said party of the second part, or its successors in this trust, shall be or become in anywise liable or responsible, shall be borne and defrayed by the said party of the first part; and said party of the first part undertakes, covenants, and agrees, for itself and its successors and assigns, that it and they will, upon demand, pay all such costs, charges, and expenses, including therein just and reasonable compensation to said party of the second

1538 part, or its successors in this trust, for such services as it or they may be called upon to render in or about or in respect of the trust hereby created.

Nineteenth. The party of the second part hereby accepts the trusts created and declared by this indenture, and shall and will, at the request of the party of the first part or its successors, in accordance with the provisions of article third hereof, but not otherwise, certify the bonds intended to be hereby secured, and deliver the same to the party of the first part or its successors. But it is hereby expressly understood and agreed that neither the said party of the second part nor any successor in the trust hereby created shall incur any responsibility or liability whatever by reason of permitting or allowing the said party of the first part, or its successors or assigns, to exercise the rights, privileges, and authority hereinbefore reserved to said party of the first part, its successors or assigns, in regard to the

stocks that now are, or may under the terms hereof become, subject hereto; and it is hereby further provided that neither the party of the second part nor any successor in the trust hereby created shall incur any responsibility or liability whatever, except for the 1539 negligent, willful, or intentional breaches by such trustee of the trust herein expressed and contained; and neither the said party of the second part nor any successor in this trust shall at any time be bound or required to undertake any proceeding at law or in equity, or otherwise, for the protection of the bondholders, involving expenditures of, or liability for, the payment of money, unless, if it shall see fit to require it, adequate indemnity against such liability or outlay be furnished by the bondholders asking such action or proceeding.

Twentieth. The said party of the first part shall from time to time execute any further instruments or assurances necessary or requisite to carry out the purposes hereof.

Twenty-first. Any request or other instrument required by this indenture to be signed and executed by bondholders may be in any number of concurrent instruments of similar tenor, and may be signed and executed by such bondholders in person or by agents appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent, and of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture if made in the following manner:

1540 The fact and date of the execution by any person of any such request or other instrument of writing may be proved by the certificate of a notary public or other officer authorized to take acknowledgments of deeds to be recorded in the city of New York that the person signing such request or other instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution. The amount of coupon bonds transferable by delivery held by any person executing any such request or other instrument as a bondholder, and the amounts and issue numbers of the bonds held by such person and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, or bankers, or other depository, wherever situated, if such certificate shall be deemed by the trustee to be satisfactory, showing that at the time therein mentioned such person had on deposit with such depository the bonds therein described. The ownership of registered bonds, or of registered bonds without coupons, shall be proved by the company's registers of such bonds. Such proof shall be *prima facie* evidence in favor of the trustee with regard to any action by it taken under such request or other instrument. The bearer of any 1541 coupon bond hereby secured which at the time shall not be reg-

istered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether the same shall be registered or not, may be deemed and treated by the company and the trustee as the absolute owner of such bond or coupon, as the case may be, for the purpose of receiving payment thereof, and for all other purposes; and no notice to the contrary shall affect the company or the trustee.

Twenty-second. In case the trustee shall have proceeded to enforce any right under this indenture by foreclosure or otherwise, and such proceeding shall have been discontinued or abandoned because of any waiver or for any other reason, or shall have been determined adversely to the trustee, then and in every such case the party of the first part and the trustee shall be restored to their former position and rights hereunder in respect of the pledged stock, and all rights, remedies, and powers of the trustee shall continue as though no such proceedings had been taken.

Twenty-third. The company covenants and agrees that it will not, directly or indirectly, extend or assent to the extension of the time for payment of any coupon or claim for interest upon any bonds secured hereby, and that it will not, directly or indirectly, be a  
1542 party to any arrangement therefor by purchasing or funding said coupons or claims for interest or registered bonds, or in any other manner. In case the payment of any such coupon or claim for interest should be so extended by or with the consent of the company, such coupon or claim for interest so extended shall not be entitled in case of default hereunder to the benefit or security of this indenture, except subject to the prior payment in full of the principal of all bonds issued hereunder and outstanding and of all coupons and claims for interest on such bonds the payment of which has not been so extended, the intention of this agreement being to prevent any accumulation after maturity of coupons or claims for interest upon registered bonds..

Twenty-fourth. The company will not at any time insist upon or plead, or in any manner whatever claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor will it claim, take, or insist on any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisement of the pledged properties, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision  
1543 herein contained or to the decree of any court of competent jurisdiction; nor after any such sale or sales will it claim or exercise any right under any statute enacted by any State to redeem the property so sold or any part thereof; and it hereby expressly waives all benefit and advantage of any such law or laws; and it covenants that it will not hinder, delay, or impede the execu-

tion of any power herein granted and delegated to the trustee, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

Twenty-fifth. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action, or proceeding in equity or at law for the foreclosure of this indenture, or for the execution of any trust thereof, or for the appointment of a receiver, or for any other remedy hereunder, unless such holder previously shall have given to the trustee written notice of default hereunder and of the continuance thereof, as hereinbefore provided; nor unless, also, the holders of twenty-five per cent in amount of the bonds hereby secured then outstanding shall have made written request upon the trustee, and shall have afforded to it reasonable opportunity either

to proceed to exercise the powers hereinbefore granted or to  
1544 institute such action, suit, or proceeding in its own name; nor unless, also, they shall have offered to the trustee adequate security and indemnity against the costs, expenses, and liabilities to be incurred therein or thereby; and such notification, request, and offer of indemnity are hereby declared, in every such case, at the option of the trustee, to be conditions precedent to the execution of the powers and trusts of this indenture and to any action or cause of action for foreclosure or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb, or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided, and for the equal benefit of all holders of such outstanding bonds and coupons.

Twenty-sixth. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the trustee, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy, but each and every such remedy shall be  
1545 cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Twenty-seventh. No delay or omission of the trustee, or of any holder of bonds hereby secured, to exercise any right or power accruing upon any default continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given hereunder to the trustee or to the bondholders may be exercised from time to time, and as often as may be deemed expedient, by the trustee, or by the bondholders severally and respectively.



Twenty-eighth. If the principal and interest of the bonds issued by the party of the first part, or its successors hereunder, and intended to be secured hereby, shall be paid to the holders thereof when and as the said principal and interest shall become due, according to the tenor and effect of the said bonds and in accordance with the provisions of this indenture, thereupon the trustee hereunder shall satisfy and discharge the lien of this indenture, and all the preferred and common stock hereby pledged or agreed to be pledged which shall then remain in the hands of the said trustee, and any residue 1546 of the trust estate or property, shall at once be transferred and delivered to the said party of the first part, its successors, or assigns, and upon such transfer and delivery thereof the said trustee shall be thenceforth discharged from further duties under this trust.

In witness whereof the parties hereto have caused their respective corporate seals, attested by their respective secretaries or assistant secretaries, to be hereunto affixed, and these presents to be signed on their behalf by their respective presidents or vice presidents on the day and year first above written.

SOUTHERN PACIFIC COMPANY,  
By THOS. H. HUBBARD,  
*Vice President.*

[Seal of Southern Pacific Company.]

Attest:

I. E. GATES,  
*Asst. Secretary.*

UNION TRUST COMPANY OF NEW YORK,  
By EDWD. KING,  
*President.*

[Seal of Union Trust Company.]

Attest:

J. V. B. THAYER,  
*Secretary.*

1547 STATE OF NEW YORK,  
*City and County of New York, ss:*

On this twenty-fifth day of September, in the year one thousand eight hundred and ninety-nine, before me personally appeared Thomas H. Hubbard and Isaac E. Gates, to me known, who, being by me severally duly sworn, did depose and say that they resided—the said Thomas H. Hubbard in the city of New York and the said Isaac E. Gates in the township of East Orange, county of Essex and State of New Jersey; that they are the vice president and assistant

secretary, respectively, of the Southern Pacific Company, the corporation described in and which executed the above instrument; that they knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that they signed their names thereto by like order.

[Notarial seal.]

GEO. H. COREY,  
*Notary Public, New York County.*

1548 STATE OF NEW YORK,

*City and County of New York, ss:*

On this twenty-fifth day of September, in the year one thousand eight hundred and ninety-nine, before me personally appeared Edward King and J. V. B. Thayer, to me known, who, being by me severally duly sworn, did depose and say that they resided in the city of New York; that they are the president and secretary, respectively, of the Union Trust Company of New York, the corporation described in and which executed the above instrument; that they knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of trustees of said corporation; and that they signed their names thereto by like order.

[Notarial seal.]

GEO. H. COREY,  
*Notary Public, New York County.*

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